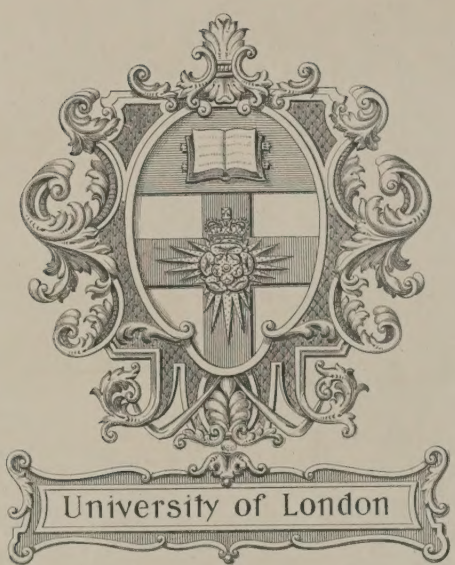
University of London

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REPORTS

FROM

COMMISSIONERS:

TWENTY-FOUR VOLUMES.

—(17.)—

MARRIAGE LAWS; NEUTRALITY LAWS;
PAWNBROKERS (IRELAND); RAILWAYS (IRELAND).

Session

19 *November* 1867 —— 31 *July* 1868.

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REPORTS FROM COMMISSIONERS:

1867-8.

TWENTY-FOUR VOLUMES:—CONTENTS OF THE

SEVENTEENTH VOLUME.

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REPORT

OF THE

ROYAL COMMISSION ON THE LAWS OF MARRIAGE.

WITH AN APPENDIX.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE E. EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1868.

[2161.]

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ROYAL COMMISSION ON THE LAWS OF MARRIAGE.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

The Commissioners.

To Our right trusty and well-beloved Councillor Frederic Baron Chelmsford, Our right trusty and well-beloved Councillor Richard Southwell Bourke, commonly called Lord Naas (*a*); Our right trusty and well-beloved Councillor Robert Vernon Baron Lyveden; Our right trusty and well-beloved Councillor Spencer Horatio Walpole; Our right trusty and well-beloved Councillor William Monsell; Our right trusty and well-beloved Councillor John Inglis, Our Justice-Clerk in Scotland (*b*); Our right trusty and well-beloved Councillor Thomas O'Hagan, one of the Justices of Our Court of Common Pleas in Ireland; Our right trusty and well-beloved Councillor Sir James Plaisted Wilde, Knight, Judge of Our Court of Probate; Our trusty and well-beloved Sir William Page Wood, Knight, a Vice-Chancellor (*c*); Our trusty and well-beloved Sir Roundell Palmer, Knight, Our Attorney-General; Our trusty and well-beloved Sir Hugh McCalmont Cairns, Knight (*d*); Our trusty and well-beloved George Young, Esquire, Our Solicitor-General for Scotland; Our trusty and well-beloved Travers Twiss, Esquire, Doctor of Civil Law, One of Our Counsel learned in the Law (*e*); and Our trusty and well-beloved Alexander Murray Dunlop, Esquire, greeting.

Subjects of inquiry.

Whereas We have deemed it expedient that a Commission should forthwith issue to inquire into and report upon the state and operation of the various laws now in force in the different parts of the United Kingdom of Great Britain and Ireland, with respect to the constitution and proof of the Contract of Marriage, and the Registration and other means of preserving evidence thereof; and also into the state and operation of the Laws of the United Kingdom in relation to the Marriages of European British Subjects in India and in the Colonies; and also into the state and operation of such of the Laws of the United Kingdom as relate to the Marriages of British Subjects in Foreign Countries.

Now Know Ye, that We, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and by these Presents authorize and appoint you, the said Frederic Baron Chelmsford, Richard Southwell Bourke commonly called Lord Naas, Robert Vernon Baron Lyveden, Spencer Horatio Walpole, William Monsell, John Inglis, Thomas O'Hagan, Sir James Plaisted Wilde, Sir William Page Wood, Sir Roundell Palmer, Sir Hugh McCalmont Cairns, George Young, Travers Twiss, and Alexander Murray Dunlop, to be Our Commissioners for the purposes aforesaid.

Power of any Five.

And for the better effecting the purposes of this Our Commission, We do by these Presents give and grant to you, or any Five or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this Our Commission, and also to call for, have access to, and examine all such Books, Documents, Registers, and Records as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

(*a*) Now Earl of Mayo.
(*b*) Now Lord Justice-General of Scotland.
(*c*) Now The Right Honourable Lord Justice Wood.
(*d*) Now Lord Chancellor.
(*e*) Now Sir Travers Twiss, Her Majesty's Advocate-General.

And We do by these Presents will and ordain that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any Five or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And Our further Will and Pleasure is, that you do, with as little delay as possible, report to Us under your hands and seals, or under the hands and seals of any Eight or more of you, your several Proceedings under and by virtue of this Our Commission, together with what you shall find touching or concerning the Premises.

And We further ordain that you or any Eight or more of you may have liberty to report your Proceedings under this Commission from time to time should you judge it expedient so to do.

And We hereby command all and singular, Our Justices of the Peace, Sheriffs, Mayors, Bailiffs, Constables, Officers, and Ministers, and all other Our loving subjects whatsoever, as well within liberties as without, that they be assistant to you in the execution of these Presents.

And for your further assistance in the due execution of this Our Commission, we have made choice of Our trusty and well-beloved John Fraser Macqueen, Esquire, one of Our Counsel learned in the law, to be Secretary to this Our Commission, and to attend you, whose services and assistance We require you to use from time to time as occasion may require.

In witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster, the Twenty-second day of March in the Twenty-eighth Year of Our Reign. (1865.)

By Warrant under the Queen's Sign Manual.

C. ROMILLY.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

We, Your Majesty's Commissioners, appointed to inquire into and report upon the state and operation of the various laws now in force in the different parts of the United Kingdom of Great Britain and Ireland, with respect to the constitution and proof of the Contract of Marriage, and the Registration and other means of preserving evidence thereof; and also into the state and operation of the Laws of the United Kingdom in relation to the Marriages of European British Subjects in India and in the Colonies; and also into the state and operation of such of the Laws of the United Kingdom as relate to the Marriages of British Subjects in Foreign Countries,—have now to state to Your Majesty, that we have inquired into and considered the subjects so referred to us, and have agreed to the following Report.

MARRIAGE LAWS OF THE UNITED KINGDOM.

I. As to the Constitution and proof of the Contract of Marriage, and the Registration and other means of preserving evidence thereof, in the different parts of the United Kingdom of Great Britain and Ireland.

Capacity to contract marriage.

The law, as to the legal capacity of persons to contract marriage, is, with certain exceptions (depending upon the effect, under particular circumstances, of Scottish sentences of divorce *a vinculo matrimonii*), the same throughout the United Kingdom. Minors, under the ages of 14, if male, and 12, if female; persons of unsound mind; persons physically disqualified; and persons under the bond of a prior subsisting marriage, are disabled from marrying (*a*); and persons related to each other within the prohibited degrees of consanguinity and affinity, (which are the same in all parts of the United Kingdom,) are incapable of intermarrying together.

For the marriage of members of the Royal Family (except the issue of Princesses married into foreign families), it is a condition precedent, that they must either have obained the consent of the reigning Sovereign, or, being of the age of 25 years or upwards, have given 12 months' notice to the Privy Council, without an expression of dissent from the marriage, during that period, from both Houses of Parliament (*b*).

All other persons are legally capable of the marriage contract, in England and Ireland; and in Scotland also, except that, in Scotland, an adulterer or adulteress, divorced by the sentence of a competent Court, declaring the adultery to have been committed with a person named in the sentence, is disabled by statute from intermarrying with that person. In some cases (as will be hereafter noticed) persons whose previous marriage has been dissolved by the sentence of a Scottish Court are held in England and Ireland to be still under the bond of such prior marriage: though in Scotland they are deemed free to marry again.

In other respects, the marriage laws of England and Ireland differ most materially from that of Scotland; and the laws of England and Ireland (which are now chiefly contained in a series of modern Acts of Parliament), while they agree in their leading principles, differ in many important particulars, and do not apply those principles in a uniform or always in a consistent manner.

General principles of the English and Irish law.

The laws of England and Ireland agree, in requiring, for the legal constitution of marriage within their respective jurisdiction, a solemn and formal contract, deliberately entered into in the presence either of a minister of religion of the Established Church, or of some other denomination recognized by law, or of a civil officer, duly authorized; and in accepting, as sufficient for this purpose, either a religious or a purely civil solemnity. They also agree in prescribing various conditions, as to residence, notice, place, time, and other matters, with a view to prevent the clandestine and unlawful, and to regulate the lawful, celebration of marriage; compliance with some of these being essential to the constitution and validity of the marriage, with others not essential. An

(*a*) Upon a dissolution of marriage by sentence of the Divorce Court in England, the bond of the dissolved marriage does not cease, so as to enable the parties to marry again, till after the lapse of the time allowed by the Statute for appeal, or (in case of an appeal) till after the appeal has been disposed of.

(*b*) 12 Geo. III. c. 11. (1772).

important exception, however, to this general agreement, is found in Ireland, in the case of Roman Catholic marriages, for which no conditions of the latter kind are prescribed. In both countries, provision is made for a general registry of marriages, with a view to their greater publicity and more authentic proof; but the validity or the proof of marriage is not made dependent upon such registration, or upon any other particular kind of evidence.

The points in which the laws of England and Ireland differ will appear from the following comparison of their main provisions.

(A.) THE MARRIAGE LAW OF ENGLAND.

The law and practice of England, with respect to marriage, may be most conveniently regarded under the division of (1.) *Marriages by the Established Church*, and (2.) *Other marriages.*

(1.) *Marriages by the Established Church.*

From the year 1753 (the date of Lord Hardwicke's Act, 26 *Geo. II. cap.* 33), to 1836 (the date of the Act 6 *& 7 Will. IV. cap.* 85, which first authorized marriages in registered buildings, and before a registrar), the power of solemnizing lawful marriages, when the parties were neither Quakers nor Jews, was conferred by the Legislature upon the clergy of the Established Church only; and about seven-ninths of the whole number of marriages in England are still so solemnized (*a*).

For the legal constitution of any marriage, so solemnized, it is necessary that it should either be preceded by the publication of banns for three Sundays in the parish church or public chapel of the parish or chapelry, (or of each parish or chapelry, if more than one), in which the parties to be married "shall dwell:" or be authorized by a licence, or registrar's certificate. The great majority (more than five-sevenths) of such marriages, (being chiefly those of persons belonging to the poorer classes,) are by banns (*b*), for which fees of inconsiderable amount (as compared with the payments required for licences), though varying in different places, and often of doubtful legality, are by custom payable.

Although banns are intended as a security against clandestine and unlawful marriages, the law has given the clergyman no express power to call for or compel any information as to the age, kindred, history, or other circumstances of parties unknown to him; except, that he may, if he think fit, require from them seven days' notice, with a statement of their names, places of abode within his parish or chapelry, and length of residence in such places of abode. No legal penalties, however, are incurred by the false statement even of any of these particulars.

In rural parishes, where the population is generally small, the object of publicity may, no doubt, be attained by banns; but they are, on that very account, distasteful in many parts of the country, not only to persons desiring concealment, but also to others who are apprehensive of temporary annoyance from their neighbours. Some (according to the information which we have received) (*c*) who have been living in concubinage, and might otherwise be disposed to marry, are kept back from doing so by fear of the notoriety attending the publication of banns; and many others procure their banns to be published in populous places where they do not usually live, and are not personally known, and where the clergy have neither the leisure to seek nor the means of obtaining accurate information concerning them (*d*). In such places, it seems universally agreed, that no really valuable publicity is attained by banns; they afford no safeguard against improvidence, illegality, or fraud; and they are often, from their great number, an inconvenient and unseemly interruption to divine service.

A controversy has lately arisen concerning the proper time of publishing banns (*e*). According to the common practice, founded on the generally received interpretation of

(*a*) In 1864 the total number of registered marriages in England and Wales was 180,387. Of these, 24,286 were celebrated in Roman Catholic and dissenting chapels and 14,611 in Superintendent Registrar's offices. The rest, 141,490, were marriages by the Established Church. (See the Registrar-General's evidence, App., p. 42.)

(*b*) In 1865, out of 136,743 registered marriages according to the rites of the Church of England, 109,572 were by banns, 19,298 by common licence, 19 by special licence, and 4,312 by Registrar's certificate. (See the Rev. Mr. Wilks' Evidence, App., p. 18.

(*c*) App., p. 14. (*d*) App., pp. 1, 2, 7, 8, 15, 16, 71, 165. (*e*) App., pp. 22, 168.

Lord Hardwicke's Act (26 Geo. 2. cap. 33.) and of 4 Geo. 4. cap. 76., the publication takes place after the Second Lesson, as well during Morning Service, as in the few cases where, from the want or suspension of any Morning Service, it is done during the Evening Service. Before these statutes, the time appointed by the rubric in the Book of Common Prayer was during the Communion office, after the Nicene Creed; and the opinion that this direction ought still to be followed, when the publication takes place during Morning Service, has lately found advocates, and has probably led to a diversity of practice in many parishes.

A marriage, founded on banns, can only be solemnized in one of the churches or chapels in which the banns have been published, and banns cannot lawfully be published in all churches and chapels, but only in parish churches, and in other churches or chapels specially authorized by episcopal licence, or Order in Council.

Licences.

Of licences, there are two kinds: a common licence, which is granted by the Ordinary, through his chancellor and surrogates; and a special licence, which is granted only by the Archbishop of Canterbury. For the latter, no fixed period of residence is necessary; and it authorizes marriage at any hour of the day or night, and at any place, whether consecrated or not. It is granted only on special grounds, and for a pecuniary payment, so large as to be prohibitory to all who are not in very affluent circumstances; and, being very seldom applied for or issued, it has no general influence upon the operation of the Marriage Laws of this country. On an average, about 12 special licences in the year are issued from the Faculty Office.

A common licence may be obtained by any person who is prepared to make the requisite payments, (these are said to vary, but in the diocese of Rochester they have been stated to us at 4*l.* 8*s.* 6*d.*, including the fees on solemnization,) (*a*) and to declare on oath that one of the parties to be married has, for the preceding 15 days, had his or her usual place of abode within the parish or district, in the church or chapel of which the marriage is to be solemnized; that there is no lawful impediment known to the deponent; and (if either party be a minor, not previously married,) that the consent of the proper parent or guardian (if any) has been obtained. The only penalty, expressly imposed by law for the false statement of any of these particulars, is forfeiture (to be enforced, if necessary, in Chancery,) of any pecuniary benefits which the party might take under the marriage. No further inquiry is made, either by the surrogate, or (except the solemn admonition to disclose any known impediment addressed to the parties in the course of the Church service) by the clergyman called upon to solemnize the marriage; no kind of publicity is given to the application; and no interval of time is required to elapse between the application and the grant of the licence, or between the grant of the licence and the solemnization of the marriage. About one-seventh of the whole number of marriages solemnized in every year by the Church of England take place under this description of licence (*b*).

Registrar's certificate.

The conditions on which a superintendent registrar's certificate, for marriage by a clergyman of the Established Church, may be obtained, are exactly the same as those required for the other modes of solemnization, which may take place under the registrar's certificate; which will be hereafter specified. The clergy of the Established Church are not bound, but they are at liberty, to solemnize marriage under these certificates. A small proportion only of the whole number of marriages by the Church are so celebrated.

Place, time, and manner of solemnization.

A marriage by common licence, or by a clergyman under a registrar's certificate, must be solemnized in a church or chapel, named in the licence, or within the district of the registrar.

Every marriage by the Established Church requires for its celebration the ministry of a duly ordained clergyman (the presence of a civil registrar not being required); and every such marriage (unless by special licence) must be celebrated between the hours of 8 and 12 a.m.; and the law directs that it shall be attested by two witnesses, besides the officiating minister.

(2.) *Marriages other than those by the Established Church.*

Marriages by registrar's certificate or licence.

The law offers to those of Your Majesty's subjects who may not desire to be married according to the rites of the Established Church, the alternative of marriage according to

(*a*) App., p. 14. 2*l.* 2*s.* 6*d.* is the fee fixed for the Vicar-General's and Faculty Office, and in the Bishop of London's Office. Of this charge, 12*s.* 6*d.* is for stamps.

(*b*) App., pp. 18, 170.

the religious usages of any other denomination, or marriage by a purely civil ceremony. Whichever alternative is chosen, certain preliminary proceedings are required to be taken in the office of the superintendent registrar, which come in place of the banns or licence of the Established Church; and the presence of a civil registrar, at the solemnization of the marriage, is in all cases required, except when the marriage is according to the usages of Quakers or Jews.

The system of registration, with which these provisions of the law are intimately connected, will be afterwards explained.

The preliminary requirements are as follows:—

Notice.

The parties intending to marry must give notice to the superintendent registrar of each district (if more than one) in which they reside, accompanied by statutory declarations, stating, under pain of perjury, various particulars, more numerous and precise than those required for a church licence. A "notice book" is kept in the superintendent registrar's office, in which copies of all such notices must be entered, and which is open to public inspection at reasonable times. The marriage may take place either upon the "certificate," or upon the "licence," of the superintendent registrar. In the former case, the notice must state a previous residence of at least seven days in the district, and a copy of the notice must be "suspended in some conspicuous place" in the superintendent registrar's office, during 21 successive days next after the entry in the notice book. In the latter, the declaration must show a residence in the district for at least 15 days next before the notice; and a licence, authorizing an immediate marriage, may issue on the second day after the entry in the notice book.

Residence required, and interval of time after notice.

If one of the parties resides in Ireland or Scotland, notice to the Irish registrar, followed by his certificate according to the Irish marriage law, or a due publication of banns in Scotland, is accepted as equivalent to an English notice and certificate.

Place of marriage.

The certificate or licence always specifies the place where the marriage is to be solemnized; which may either be the office of the superintendent registrar himself, or a registered building, or, in the cases of persons professing to be Quakers or Jews, a place where marriages are celebrated according to the usages of Quakers or Jews.

If the marriage be in a registered building, it must (as a general rule) be within the district, or one of the districts, in which the notice was given; but the certificate or licence may authorize its solemnization in the usual place of worship of the parties (if not more than two miles beyond the limits of the district), or in a registered building within the nearest district in which the ceremonies which they wish to adopt are used, upon special cause being shown by certain forms of declaration prescribed by statute (*a*) for cases in which adherence to the general rule might be inconvenient or impracticable. No marriage can be solemnized, under the registrar's certificate, in any church or registered place of worship, without the consent of the minister of such church or place of worship.

Registration of places of worship for marriage.

Every separate building, certified under 52 *Geo.* 3. *cap.* 155. as a place of religious worship, may, under Lord Russell's Act (6 & 7 Will. 4. c. 85.), be registered as a building for the solemnization of marriages, upon the application of a proprietor or trustee, accompanied by a certificate of at least 20 householders, that they have used such building for one year as their usual place of religious worship, and that they desire it to be registered: and any part of a building, licensed and used for public religious worship as a Roman Catholic chapel only, is deemed, for this purpose, a separate building.

Presence of registrar.

Every marriage in the registrar's office must be solemnized in the presence of the superintendent registrar; every marriage in a registered building must be solemnized in the presence of one of the registrars under his superintendence. Both in the registrar's office, and in registered buildings, the marriage must be solemnized in the presence of two witnesses, and between 8 and 12 o'clock a.m., and the parties must declare, that they take each other as husband and wife, knowing of no lawful impediment. No other form of solemnization is prescribed; the addition of any kind of religious ceremony being permitted in a registered building, but prohibited in the superintendent registrar's office.

Uniformity of the law for all non-conformists,

In all these respects, the law and practice is uniform, whether the parties are Roman Catholics, Presbyterians, or of any other religious denomination, except Quakers and Jews. The marriages of Quakers and Jews, having been excepted from the operation

(*a*) 3 & 4 Vict. c. 72.

of the Acts prior to 6 & 7 *Will.* 4. *cap.* 85., are now subject to a peculiar legislation. The same notice is required from them, as from other non-conformists, and they must, like others, be married under the superintendent registrar's certificate or licence. But they are not restricted to marriage in registered buildings, or in places within the district in which the parties dwell; any place within the superintendent registrar's district, in which marriages can properly be solemnized according to their respective usages, may be named in the certificate or licence, and the presence at the marriage of their own registering officer, in the case of Quakers, or of an officer certified in a particular manner to be the secretary of a Jewish synagogue, in the case of Jews, is accepted as sufficient to authenticate the contract, without the attendance of a civil registrar. except Quakers and Jews.

Rather more than one-seventh of the whole number of marriages in England are annually celebrated in registered buildings, and about one-twelfth in registrars' offices (*a*). The cost of marriage by a registrar's licence has been stated to us at 2*l.* 10*s.* (*b*). No fee is payable for the solemnization of marriage in a registrar's office. Cost of marriage by registrar's licence.

Marriages of Minors.

With respect to the marriages of minors, the law is substantially the same, (though with some unimportant differences in its directory provisions), whether the marriage is intended to be solemnized by the Established Church, or otherwise. Minors.

The consent of parents or guardians (subject to an appeal to the Court of Chancery, in cases of unreasonable refusal), is so far required by law, that the parent or guardian, by publicly forbidding the banns or the solemnization, or by caveat, or by entry in the registrar's marriage notice book, may prevent the banns from proceeding, or the licence or certificate (as the case may be) from issuing, or the marriage from taking place; and the consequence of the marriage of a minor, without the proper consent, may be, that the Court of Chancery will deprive the offending party of any pecuniary benefit from the marriage. But it is not incumbent on any clergyman, surrogate, or superintendent registrar, to call for any proof of consent, beyond the declarations of the parties when a licence is applied for, or notice given to a registrar; and the marriage of a minor, if actually solemnized without the requisite consent, is valid in law.

Caveats and Prohibition of Marriage.

A caveat, or entry of prohibition, in the registry of the ordinary, or in a registrar's office, alleging any legal impediment to a marriage, stops the issue of the surrogate's licence, or of the registrar's certificate or licence, until the objection is disposed of in due course of law. Power is given to superintendent registrars to inquire into and decide upon the validity of such objections, subject to an appeal to the Registrar-General: and a caveat entered in the registry of the ordinary may be brought for adjudication before the judge, for whom the surrogate is deputy, or (in the absence and with the sanction of the judge) may be disposed of by the surrogate. Caveats.

Effect of Non-compliance with Legal Requisites.

The effect of non-compliance with the various legal requirements, as well in cases of marriage by the Established Church as in others, must now be stated.

The false statement of any of those particulars, as to which affidavits or statutory declarations are required, is punishable as perjury or misdemeanor, or by forfeiture of pecuniary interests, but does not vitiate a marriage. Penalties on parties.

The wilful celebration of a marriage by a clergyman of the Established Church, or a registrar, in contravention of the law, is felony by statute. Illegal celebration made felony.

No evidence can be offered after a marriage for the purpose of showing non-compliance with the provisions of the Statutes as to residence.

Nullities.

No want of attestation, or other mere defect of form, will vitiate any marriage contracted in good faith. But it may be vitiated and rendered null in law by the falsification, or even by a slight disguise, through the fraud of both parties, of a Christian name or surname in the publication of banns (though not in a licence); and possibly also in a registrar's certificate. Nullities. False names.

(*a*) App., pp. 18, 170. (*b*) App., p. 14

When Church marriages are void.

A marriage according to the rites of the Established Church is, by 4 Geo. 4. cap. 76, sect. 22, "null and void to all intents and purposes whatsoever," if the parties (*i.e.* both of them,) have "knowingly and wilfully" intermarried in any other place than a church or chapel in which banns may be lawfully published (unless by special licence), or have "knowingly and wilfully" intermarried "without due publication of banns, or licence "from a person having authority to grant the same, first had and obtained," or have "knowingly and wilfully assented to or acquiesced in the solemnization of such marriage "by any person not being in holy orders."

When marriages under 6 & 7 Will. 4. cap. 85. are void.

A marriage purporting to be solemnized under 6 & 7 Will. 4. cap. 85. is by that Act declared to be "null and void," if the parties (the Act says "any person," but it is presumed that both parties must concur,) shall "knowingly and wilfully" intermarry in any place other than the church, chapel, or registered building specified in the notice and certificate, or without due notice to the superintendent registrar, or without the superintendent registrar's certificate, duly issued, or without his licence when necessary, or in the absence of a registrar or superintendent registrar, where his presence is necessary under the Act.

It is obviously possible, that such expressions as "*knowingly and wilfully*," and, "without *due* publication of banns," may occasionally give rise to difficulties, especially when the rule, that everyone is presumed to know the *law*, is taken into account. The Legislature has on various occasions recognized that possibility, by passing special Acts for the confirmation of marriages solemnized in particular places, in which it has been suggested that authority to publish banns may have been wanting; as, for example, when a church has been rebuilt, and not re-consecrated, which some persons suppose to be necessary after rebuilding a church. The *facts* in such a case may be notorious; and if the law be as supposed, and if knowledge of it is to be imputed, the law may be said to have been "knowingly and wilfully" violated, on the same ground on which a marriage would be held void (as we apprehend it certainly would) if it were solemnized (however ignorantly) without *any* publication of banns at all, or any common or special licence, or registrar's certificate or licence; or if it were solemnized in a church or other place where no banns had been published, or, (if the marriage was not by banns,) which was manifestly unauthorized by the terms of the licence, or of the certificate, as actually granted.

Banns and licences, &c. not available after three months.

No publication of banns, common or special licence, or superintendent registrar's certificate or licence, is available as legal authority for the solemnization of any marriage at any time more remote than three months from the date of the last publication of banns or of the issue of the licence or certificate.

Quakers and Jews.

A marriage cannot lawfully be contracted according to the peculiar usages of the Quakers except between persons, both of whom are members of or (if not members) "profess with and are of the persuasion of" the Society of Friends, nor according to the peculiar usages of the Jews except between persons both of whom are of the Jewish religion. These usages being referred to by the Statutes as the rules of lawful solemnization, difficult questions, perhaps even affecting the validity of marriages *bonâ fide* contracted, may be liable to arise, in cases in which it may be alleged that those usages have not been properly observed.

Except in these peculiar cases, of Quakers and Jews, no marriage in England is liable to be held void on any ground connected with the religious belief or persuasion of both or either of the parties, in whatever form, by whatever person, or in whatever place it may have been solemnized.

Registration.

Ecclesiastical registers.

All marriages solemnized by the clergy of the Church of England ought by law to be contemporaneously recorded in the proper church registers, under the custody and responsibility of the incumbent or other officiating minister, and duplicates of these registers are required to be sent once in every year to the Diocesan Registry.

Civil registers.

For the purposes of civil registration, there is a General Register Office in London, under the Registrar-General; and the country is divided into districts, (framed for the most part by the subdivision of Poor Law Unions), each of which is under a superin-

tendent registrar. In every district, subordinate registrars are appointed to be present at marriages; and their place, in the case of Quaker marriages, is supplied by persons certified to the Registrar-General by the recording clerk of the Quakers at their central office in London to be registering officers in England of the society; and, in the case of Jewish marriages, either by persons who are certified to the Registrar-General, by the president for the time being of the London committee of deputies of the British Jews, as secretaries of synagogues in England professing the Jewish religion, or by the secretary of the West London synagogue of British Jews (certified as such by 20 householders professing the Jewish religion and being members of that synagogue), or by persons certified by the secretary of the West London synagogue as secretaries of synagogues in connexion with that synagogue, and having been established for not less than one year.

Registering officers of Quakers.

Secretaries of Jewish synagogues.

Marriage register books, in a prescribed form, and forms for certified copies, are furnished free of cost by the Registrar-General to the superintendent and subordinate registrars, the clergy of the Established Church authorized to solemnize marriages, and the registering officers of the Quakers, and certified secretaries of Jewish synagogues. Every officiating minister of the Established Church, registering officer of Quakers, secretary of the husband's synagogue in the case of Jews, or civil registrar present at a marriage, is required by law to enter, in one of these books, as soon as may be after their celebration, all marriages solemnized by him or in his presence, and to send duplicates or copies every three months to the superintendent registrars, (or, in case of the clergy of the Established Church, to some registrar of the district, by whom such duplicates or copies are to be transmitted to the superintendent registrar); and each superintendent registrar, four times in every year, is required to transmit the duplicates or copies so sent to the Registrar-General, in whose office they are permanently deposited.

Forms to be filled up and transmitted to the Registrar-General.

Both the ecclesiastical and the civil registers, thus kept, are receivable in all courts as evidence of marriage, and are by themselves sufficient for the *primâ facie* legal proof of its due solemnization; but the fact of marriage may be otherwise proved, when the circumstances are such as to render such proof credible, notwithstanding the absence of register evidence.

Register evidence.

This system of registration is found in practice to work easily and well, and to produce a very high degree of certainty and security in the proof of marriage.

(B.) THE MARRIAGE LAW OF IRELAND.

(B.) Law of Ireland.

So far as relates to marriage by the Established Church, there are few points of difference between the law of England and that of Ireland.

Irish Church marriages.

The publication of banns in Ireland is governed solely by the Canons of the Church and the Rubrics in the Book of Common Prayer. It therefore always takes place during the morning service, after the Nicene Creed; and it would appear that three successive publications on *Sundays* are not necessary; publication on any holyday of the Church, on which divine service is performed, being equivalent to publication on a Sunday. In Ireland, therefore, it would seem to be possible, that, at some seasons of the year, the necessary publication of banns might be completed within a much less period of time than the *minimum* of fifteen days required in England: it has even been suggested to us, by one witness (*a*), that, in Easter, week, by making use of the holidays for that purpose, an Irish marriage by banns might lawfully be solemnized on the third day after the first publication. The Irish clergy, also, have not the power, given to the English clergy by 4 Geo. 4. cap. 76, to require, if they think fit, before publishing banns, seven days' previous notice, with information on certain points as to the names and residence of the parties.

Banns.

We are informed, however, that in Ireland, on account of the cheapness of licences, which are stated to cost not more than 5*s*., marriage by banns according to the rites of the Established Church is much less frequent (at all events in the province of Dublin) than marriage by licence (*b*).

(*a*) App., p. 17, The Rev. S. C. Wilks.

(*b*) App., p. 186, Dr. Ball.

Common licences.

A common licence is granted by the ordinary, through his chancellor and surrogates, after seven days notice from either of the parties, and on the statement (verified by affidavit) of the residence of such party for not less than seven days next preceding in the parish named in the notice. The affidavit must also depose to other particulars, as to names, rank, condition, age, and the dwelling places and length of residence of both parties, which are fuller and more precise than those required in England. The notice must be entered by the surrogate in a "Marriage Notice Book" kept in his office, and open to public inspection, without fee, at reasonable times, with which every surrogate is supplied by the Registrar-General for Ireland. In these respects, the law as to marriage by common licence in Ireland appears to be framed very much on the model of the English law as to marriage by a registrar's licence. A further safeguard is superadded by 7 & 8 Vict. cap. 81. sect. 2, which may in many cases be of some practical value, and to which there is nothing similar in the English law; viz., the surrogate is required to send a copy of every notice for a marriage licence, as received by him and entered in his book, to the incumbent of the parish (or of each of the parishes, if different) in which the parties dwell.

Special licences.

A special licence in Ireland is granted only by the Archbishop of Armagh.

Time for which banns or licence is available.

A common licence, in Ireland, as in England, ceases to be available, unless it be followed by the solemnization of marriage within three months. But it does not appear that this or any other limit of time is fixed by law in Ireland, for the solemnization of marriage after a due publication of banns, or under a special licence.

Registrar's certificate.

It is compulsory upon the clergy of the Established Church in Ireland, (and not optional, as in England,) to solemnize marriage under the authority of a registrar's certificate.

With the above exceptions, the law of marriage according to the rites of the Established Church appears to be the same in Ireland as in England.

Other Marriages.

But with respect to marriages, other than those by the Established Church, there is an extensive divergence between the laws of these two parts of the United Kingdom; the marriage law of Ireland being sectarian or denominational, and varying in the substance of its provisions according to differences of religious belief, to a much greater extent than the law of England.

Of such marriages, there are in Ireland three distinct classes: (1.) Roman Catholic marriages; (2.) Presbyterian marriages; and (3.) marriages under a registrar's certificate or licence.

(1.) *Roman Catholic Marriages.*

Roman Catholic marriages.

Until the year 1863, marriages between two Roman Catholics, (being the great majority of the whole number of marriages annually solemnized in Ireland,) were left to the operation of the common law, without any statutory enactment: and, so far as relates to the legal constitution of marriage between such parties, this is still the case; the provisions of the Act passed in that year, (26 & 27 Vict. c. 90.,) being directory, with a view to the registration only of such marriages.

By the common law, (as determined by the House of Lords in the celebrated case of *The Queen* v. *Millis*,) (*a*) the presence of a clergyman in holy orders, either of the Roman Catholic or of a Protestant Episcopal Church, at the time of solemnization, was essential to the valid constitution of the contract of marriage: but a marriage solemnized by any such clergyman, whether publicly or privately, at whatever time or place, and in whatever form or manner, (between parties competent to intermarry), was valid, without any previous publication of banns, licence, notice, residence, or consent; and this is still the law of Ireland as to all Roman Catholic marriages.

Mixed marriages by Roman Catholics.

The solemnization, however, of mixed marriages by the Roman Catholic clergy in Ireland is not permitted. By the Irish Statute 19 Geo. 2. c. 13. every marriage celebrated by a Popish priest between two Protestants, or between a Papist and "any

(*a*) 10 Cl. & Finn., 534.

" person who hath been or hath professed him or herself to be a Protestant at any " time within twelve months before such celebration of marriage," is declared absolutely null and void to all intents and purposes; and by two other Acts of the same reign such a celebration of marriage is made a capital felony.

These enactments (except as to the punishment of death) are still in force, and it is a controverted question what ought, under them, to be the test of Protestantism, or of a "profession" of Protestantism. When these statutes were passed, *all* mixed marriages in Ireland between Protestants and Roman Catholics, (even if solemnized by the clergy of the Established Church), were prohibited under severe penalties; but that prohibition has long since been removed, except as to marriages celebrated by Roman Catholic priests.

There is no statute, except those above mentioned, affecting Roman Catholic marriages in Ireland.

Marriage law of the Roman Catholic Church in Ireland.

By the law of the Roman Catholic Church, under the decrees of the Council of Trent, (which are now received throughout Ireland,) the presence of the bishop of the diocese, or priest of the parish, (or of some other priest deputed by the priest of the parish,) is made indispensable for the solemnization of a marriage recognized as valid by that law; and every Roman Catholic marriage ought, according to the same law, (though not under pain of nullity,) to be preceded by the publication of banns for three Sundays, unless dispensed with, (as in Ireland it usually is,) by episcopal licence. Of these matters, however, (being requisites of marriage by the internal economy only of the Roman Catholic Church,) the law of the land takes no cognizance; and a marriage, contracted in the presence of any Roman Catholic priest in Ireland, between two Roman Catholics, although contrary to the law and discipline of their own church, would be legally valid.

(2.) *Presbyterian Marriages.*

Presbyterian marriages.

The Irish Marriage Act of 1844 (7 & 8 Vict. cap. 81., which was passed in consequence of the decision in the case of *The Queen* v. *Millis*, invalidating all celebration of mixed marriages (*a*) by Protestant Non-conformists) draws a line between Presbyterians and other Protestant denominations; and, in its mode of regulating Presbyterian marriages, follows closely the analogy of the law relating to marriages by the Established Church.

Between two parties, of whom either is a Presbyterian, (a fact, into which no inquiry is permitted after the marriage), marriage may be solemnized in a certified Presbyterian meeting house, by a Presbyterian minister, according to the forms used by Presbyterians.

Presbyterian banns.

Every such marriage must be preceded, either by a publication of banns during Divine Service on three successive Sundays in the certified meeting house (or in each of the meeting houses, if more than one,) " frequented by the congregation " (or congregations) " of which the parties are members," or by a licence, granted by certain Presbyterian ministers whose function closely resembles that of surrogates in the Established Church. If both parties are Presbyterians, they have the choice of banns or licence; if only one, a licence (of which the cost is 5*s*.) is necessary.

Presbyterian licences.

Notice required for banns.

Before publication of banns in a Presbyterian meeting house, the statute requires six days' notice, (so that at least 21 days must elapse between the notice and the marriage), with a statement of the names of the parties, the congregations of which they are members, the houses in which they live or lodge, and the length of their abode there.

Conditions of Presbyterian licences.

For the grant of a licence, a declaration on oath, by one of the parties, of residence during the last 15 days within the Presbytery, together with other particulars similar to those required for a surrogate's licence, is necessary; and besides this, the party must produce to the licensing minister, seven days before the licence issues, a certificate from the minister of the congregation of which he or she shall have been a member for at least one month previously, in a form prescribed; stating, that the party has duly entered a notice of the intended marriage in a book kept for the purpose in that congregation, (which, however, seems to be of little use for the purposes of publicity, as it is not open, even to all members of the congregation, for general inspection,) and that he is a member of that congregation, and adding other particulars very similar to those required, both in England and Ireland, for a registrar's certificate or licence. This

(*a*) An Act of the Irish Parliament (21 & 22 Geo. III. cap. 25.) had previously legalized marriages solemnized by Protestant dissenting ministers between Protestant dissenters.

minister's certificate is to be filed in the licensing minister's office, and a copy entered in a book furnished to him by the Registrar-General.

Caveats.

If any objection is taken, by caveat or otherwise, to the issue of a Presbyterian licence, the licensing minister judges in the first instance of the validity of such objection, and if he refuse the licence, an appeal lies to the Presbytery, who may either confirm his refusal, or direct the licence to issue.

Place of solemnization.

Hours of solemnization.

Every licence must specify the certified meeting house in which the marriage is to be solemnized; and it must be solemnized there, and not elsewhere, by a Presbyterian minister, with open doors, between the hours of 8 a.m. and 2 p.m.

Presbyterian licensing ministers.

Certified Presbyterian meeting houses.

Licensing ministers are appointed by each Presbytery, with the approval of the Lord Lieutenant of Ireland; they give security to the Registrar-General before they issue licences, and they hold their office during the pleasure of the Lord Lieutenant. With them, also, it rests to certify the Presbyterian meeting houses, in which marriages are to be solemnized, to the Registrar-General; who, after giving public notice, registers the meeting houses so certified.

No limit of time.

It does not appear that the space of three months or any other fixed time, is limited for the legal solemnization of marriage under a Presbyterian publication of banns or licence.

Almost all marriages among the Irish Presbyterians take place by licence, although more costly, and giving more trouble, than the publication of banns. No provision is made for the acceptance, in lieu of the ordinary mode of procedure among Irish Presbyterians, of any corresponding or other procedure in England or Scotland, in the case of one of the parties residing in either of those countries.

(3.) *Marriages by Registrar's Certificate or Licence.*

Marriages by registrar's certificate or licence.

Under this head are comprised all other Non-conformist marriages in Ireland (except those of Roman Catholics and Presbyterians), including the marriages of Quakers and Jews, and marriages by a merely civil ceremony.

The procedure as to notices, declarations, registrar's certificates and licences, and the conditions as to time, and otherwise, upon which such certificates and licences issue, are, with the following exceptions, substantially the same in Ireland, as under the parallel system in England.

Notices.

Declarations required.

The notices must, in all cases, be given to the district registrar; and, whether the marriage is to be by his certificate or by his licence, the notice and the declaration accompanying it must state a residence of the party for not less than seven days immediately preceding within the district. It must also state (together with other particulars, similar to those required in England), what is the church, chapel, or place of worship usually attended by each party; and that they have attended such place of worship for not less than one month.

Notice to be given to minister of the place of worship which each party attends; and to the minister who is to officiate.

Ditto to registering officer of Quakers and secretaries of Jews.

No public exhibition in registrar's office unless the parties are to be married there.

Wherever the marriage is to be solemnized, and whether by certificate or licence, the district registrar is required, under the penalty of 40*l.*, to send notice by post to the minister of the church, chapel, or place of worship described by the applicant as that which each of the parties usually attends. If the celebration is to take place in a church, chapel, or registered place of worship, notice must be sent in like manner to the minister of that church, chapel, or place of worship; or, if according to the usages of Quakers or Jews, to the registering officer of the Quakers, or the secretary of the synagogue. If the solemnization is to be in the registrar's office, the notice must be hung up in that office during the whole period required to elapse between the date of the notice and the time of solemnization; but, except in the latter case, no such exhibition of the notice or other mode of publication is required.

A registrar's certificate (as in England) issues after an interval of 21 days from the date of the notice; but a registrar's licence cannot issue till seven days after the notice. Registrars' certificates (not licences) may be issued for a marriage by the Established Church or by a Presbyterian minister; and are made equivalent by law in

both cases to a due publication of banns. When either party resides in England or Scotland, an English registrar's certificate, or a Scotch publication of banns on three Sundays, is accepted as sufficient by the Irish registrars.

Interval before grant of certificate or licence.

The registration of places of worship for the solemnization of marriage takes place in Ireland upon the application (which may be made either to the district registrar or to the Registrar-General,) of a proprietor or trustee, accompanied by a certificate of 10 householders (not 20, as in England), stating that they are members of a congregation which has used such place of worship for one year.

Registered places of worship of non-presbyterian protestant dissenters.

On certificate of 10 householders.

All marriages in Ireland under a registrar's certificate or licence must be solemnized within three months after its date, in the place named in the certificate or licence, with open doors, between the hours of 8 a.m. and 2 p.m.; and, since 1863, the presence of a registrar at such solemnization, which was previously necessary, is no longer required, unless the marriage takes place in the registrar's office.

Time and place of solemnization.

Registrar's presence not required.

If the marriage is "according to the usages of any church, denomination, or body "of Protestant Christians," it must be solemnized by a minister of the Church, &c., to which one, at least, of the parties belongs.

Protestant marriages with religious rites.

Minors, Caveats, &c.

As to the marriages of minors, consent of guardians, caveats, and prohibitions, the law of Ireland (so far as relates to all but Roman Catholic marriages) is substantially the same as that of England. As to Roman Catholic marriages there is, on these subjects, no law.

Minors, caveats, &c.

Consequences of illegal Celebration.

Severe penalties are imposed on all ministers of religion and registrars wilfully contravening the directions of the Irish Marriage Acts. The provisions of those Acts, both as to formal and other irregularities which do not vitiate marriage, and as to knowingly and wilfully marrying in an unauthorized place, or without the requisite publication of banns, licence, notice, or registrar's certificate or licence, (which renders the marriage absolutely null and void), are substantially the same with those of the law of England.

Consequences of illegal celebration.

Penalties.

Nullities.

Registration.

The system of registration in Ireland (as to all but Roman Catholic marriages), is also similar in its general arrrangements to that in England. Besides the parochial and other registers of the Established Church, there is a civil registry, under the Registrar-General, in Dublin; with country districts, under district registrars.

Registration.

The ministers of the several churches and chapels of the Established Church, Presbyterian meeting houses, and other registered places of worship in which marriages may be solemnized, are supplied with proper books in duplicate by the Registrar-General, and are bound, under heavy pecuniary penalties, whenever they solemnize a marriage, to record it in these books; one of which is kept in each congregation as a local register by the officiating minister for the time being of the particular church, chapel, or meeting house; and the other is required to be transmitted periodically by such officiating minister to the registrar of the district, to whom also transcripts are sent quarterly, for transmission to the office of the Registrar-General, in which they are permanently kept. In the cases of Quaker and Jewish marriages, the functions, in these respects, of the officiating minister, are fulfilled by the registering officers of the Quakers, certified as such to the Registrar-General by the recording clerk of the Society of Friends at their central office in Dublin, and by the secretaries of synagogues, certified to him by the President of the London Committee of Deputies of British Jews. An effective general registration of all marriages in Ireland, except those solemnized by the Roman Catholic clergy, is by these means attained.

Duties imposed on all Protestant ministers, and on officers of Quakers and Jews.

For the registration of Roman Catholic marriages a different system is provided by Mr. Monsell's Act (26 & 27 Vict. cap. 90.)

Different system as to Roman Catholic marriages.

Mr. Monsell's Act.

Previous certificate from registrar to be returned after marriage.

Roman Catholics, about to be married, are required, under a penalty of 10*l.* upon the husband, to obtain previously to the celebration, from the district registrar, a form of certificate with particulars to be filled up. This certificate is to be signed at the time of the marriage by the officiating clergyman, the parties, and two witnesses; and the *husband* is required to return it, by post, to the district registrar, within three days after the celebration of the marriage, under the like penalty of 10*l.*

Duty imposed on the parties only, and not on the officiating clergy.

No legal obligation, however, for any of these purposes, is imposed upon the officiating clergyman; and the consequence is, that although in some of the Roman Catholic dioceses in Ireland, through the influence of the clergy, these provisions of the law are extensively complied with,(*a*) in other dioceses (and probably in the majority of cases), they are, as yet, extensively disregarded: and no prosecution is known to have taken place under this Act (*b*).

Roman Catholic Church registers.

By the law of the Roman Catholic Church every parish priest solemnizing marriage is required to enter the particulars of such marriage in registers to be kept for that purpose; and it has been stated to us, that, although the preservation of these parochial registers may have been neglected in former times, the authorities of the Roman Catholic Church in Ireland now strictly enforce this part of their law, and that it would be an advantage if these registers were made legal evidence (*c*). It is not, however, the custom in Ireland, (as it is in France,) for the originals or duplicates of these registers to be sent to the diocesan bishops; and no adequate securities seem to exist for their proper official custody, or for their safe transmission from each parish priest to his successor (*d*).

(C.)—THE MARRIAGE LAW OF SCOTLAND.

Lord Brougham's Act, 21 days' residence in Scotland necessary.

Under the Act 19 & 20 *Vict. cap* 96. (commonly called Lord Brougham's Act) it is necessary, for the validity of any marriage contracted in Scotland, that one of the parties should either have his or her usual place of residence in Scotland at the date of the marriage, or have lived in Scotland for 21 days next preceding such marriage. Before this statute, it was very common for English persons to contract clandestine marriages in Scotland, at Gretna Green and other places, immediately after crossing the border: a practice which this Act has effectually suppressed (*e*).

The ancient Canon Law.

With this exception, the legal constitution of marriage in Scotland depends, not upon the observance of any solemnities or other conditions prescribed by statute, but upon the ancient Canon Law; which, although now altered generally in the Roman Catholic Church by the decrees of the Council of Trent, and superseded in every other part of European Christendom by Civil Legislation, still remains in force in Scotland, subject only to such modifications as it has undergone from time to time by the application of the rules of evidence established in that country, and the course of judicial decision (*f*). Penalties are imposed by several ancient laws upon the clandestine solemnization of marriage; and, by recent enactments, the power of formal solemnization is conferred upon the ministers of all religious persuasions, and provision is made for the registration of marriages. But none of these enactments alter, or in any way limit the application of, the rules of the ancient Canon Law as to the constitution of marriage.

Consent of parties makes marriage.

No solemnities, &c. required.

Under this system of law it is not requisite that the contract should be made or authenticated in the presence of any minister of religion or civil officer, or by any kind of solemnity, formal declaration, or other definite act. "The leading principle," said Lord Deas in a recent judgment (*g*), "is that *consent makes marriage*. No form or "ceremony, civil or religious, no notice before or publication after, no consummation or "cohabitation, no writing, no witnesses even are essential to the constitution of this, "the most important contract which two private parties can enter into, whether as "affecting their domestic arrangements or the pecuniary interests of themselves and "their families. Matrimonial consent may be verbally and effectually interchanged "when no third party is present; and if it can be proved, even at the distance of "years, by subsequent written acknowledgments or oath of reference, or in any other "competent way, that such consent was seriously and deliberately given, the parties "will be held to have been married, from that time forward, whether they have "cohabited in the interval or not."

(*a*) App., pp. 3, 9, 10, 11, 32, 37, 97. (*b*) App., pp. 106, 112, 186. (*c*) App., p. 32.
(*d*) App., p. 100. (*e*) App., pp. 3, 121, 131. (*f*) App., p. 83.
(*g*) Leslie and Leslie, Court of Session Reports, 2nd Series, XXII., p. 993.

Professing to be founded upon this principle, the language of the Scottish law recognizes three distinct modes of constituting marriage: one called "Regular," and two called "Irregular." *Regular* marriages are those which are solemnized according to certain rules of procedure, established by custom or statute, in the presence of a minister of religion; corresponding, therefore, with the various modes of marriage (except that by a Civil Registrar) authorized by law in England and Ireland. *Irregular* marriages are those which are not thus solemnized: the first class of irregular marriages being said to be constituted "*per verba de præsenti*," *i.e.*, by some present interchange of consent to be thenceforth man and wife, privately or informally given; and the second class, "*per verba de futuro, subsequente copulâ*," *i.e.*, by a promise of future marriage without any present interchange of consent to be husband and wife, followed at a subsequent time by carnal intercourse.

Regular and irregular marriages.

(1.) *Regular Marriages.*

Regular marriages.

Before the statutes 10 *Anne, cap.* 7. and 4 *&* 5 *Will.* 4. *cap.* 28., the solemnization of marriage by any person other than a Minister of the Established Church of Scotland was prohibited under severe penalties, and deemed clandestine and irregular. The first relaxation of this law, by 10 *Anne, cap.* 7. (*a*) was in favour of the Protestant Episcopal Communion only, whose Ministers, duly ordained by Protestant Bishops, were thereby permitted to celebrate marriage between parties whose banns should be published on three several Lord's days in the Episcopal congregations frequented by both of them, as well as in the parochial churches. In other respects the general prohibition continued in force till 1834; when, by 4 *&* 5 *Will.* 4. *cap.* 28., all the penalties imposed by the older statutes upon the celebration of marriage in Scotland by Roman Catholic Priests or other Ministers, not belonging to the Established Church of Scotland, were repealed; and it was declared lawful for all persons in Scotland, "after the proclamation of banns "there," to be married by any Priests or Ministers not of the Established Church.

Originally confined to Ministers of Established Church.

Extended by 10 Anne, c. 7. to Episcopalians.

And by 4 & 5 Will. 4. c. 28. to Ministers of all other Persuasions.

To render, however, the solemnization of marriage under these statutes lawful and regular, the previous publication of banns in the Church (*i.e.* the Established Church) of the parish in which each of the parties resides, was, and is still, in all cases required, whether either or both of the parties belong to the Established Church, or to any other denomination.

But banns to be published in parochial churches.

For this purpose application is made to the session clerk of the parish. Every such application must state (and the statement must be verified by the certificate of two householders or of one elder of the parish), that the parties (or one of them) have or has resided for six weeks in the parish, and are or is personally known to the certifying householders or elder, and that they are unmarried, and not related to each other within the prohibited degrees.

Six weeks' residence required before banns.

The publication of banns takes place by the session clerk in the parish church at the time when the congregation is assembled for, and immediately before the commencement of, Divine service. It must be repeated three times, and it ought properly to take place on three successive Sundays. But the general practice, in fact, is to make all the three publications on the same Sunday, on payment of fees considerably larger than those which would be payable if the more correct practice were observed (*b*). Of the fees, charged for banns by the session clerks in Scotland, much complaint has been made before us; they are said to be, in many places, exorbitant, and to be imposed or augmented without due legal authority. We have even been informed, by Dr. Stark, one of the chief officers under the Registrar-General for Scotland, that their effect is to "drive large numbers of the lower orders to marry irregularly, or more commonly "to live in a state of concubinage, simply because they are unable to pay these high "fees, charged for the publication of banns, which would have enabled them to marry "regularly" (*c*), and a similar representation has been made to us by the town council of Edinburgh and the parochial board of Leith (*d*).

Time and manner of publishing banns.

Fees charged for banns.

It is not necessary that regular marriages in Scotland should be solemnized in any particular form, or at any particular place or time. The presence of any Minister of Religion at the time of solemnization, wherever it takes place, (or, in the cases of Quakers

Solemnization by Ministers of Religion, &c.

(*a*) App., p. 3.
(*b*) App., pp. 93, 146, 149.
(*c*) App., p. 5, Evidence of Dr. Stark. It appears that the session clerks only, and not the parochial ministers, derive benefit from these fees.
(*d*) App., p. 46.

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and Jews, of their proper officers,) entitles them to the character of marriage *in facie ecclesiæ*, and (except in the cases of Roman Catholics and Protestant Episcopalians, whose general practice is to marry in their churches or chapels,) they are, in fact, usually solemnized in private houses, and indiscriminately at all hours of the day.

Usually in private houses.

Registrar's presence not required.

No provision is made by the Scottish Registration Acts for enabling the Civil Registrar to give the character of a regular marriage to any contract of marriage entered into in his presence without any religious ceremony; nor is the presence of a Civil Registrar required at any regular marriage, though his attendance, if the parties desire it, on payment of 20*s.*, may be obtained (*a*).

Non-compliance with the legal conditions of regular marriage, as to banns or otherwise, may subject the parties concerned to statutory penalties, but cannot affect the validity of the interchange of consent as constituting marriage; the utmost effect of such non-compliance being to make the marriage irregular.

(2.) *Irregular Marriages per verba de præsenti.*

Irregular marriages per verba de præsenti.

As has already been stated, nothing more is necessary to constitute actual marriage by the law of Scotland, as now established, than a present interchange of consent, in whatever manner given, to become thenceforth husband and wife. If this be done without due publication of banns, or without the intervention of a Minister of Religion, it is irregular; and it falls equally within this category, whether the consent is declared in the most open and authentic manner before a justice of the peace, (of which instances are given in the evidence before us) (*b*), or before a Civil Registrar, or before any unauthorized person taking upon himself to celebrate marriages (as used to be the practice at Gretna Green), or in the most secret and private manner between the parties themselves, with or without witnesses, and with or without any subsequent open acknowledgment or matrimonial cohabitation.

Considered by Mr. Fraser and others to be a modern innovation.

Cases of *Dalrymple* and *Macadam*.

But although this is now fully settled to be the law of Scotland, it is by no means generally admitted that it always was so. On the contrary, it is confidently maintained by some high authorities (*c*), that this doctrine is a recent innovation, due, in great measure, to the decision of an English judge, Lord Stowell, in the celebrated case of Dalrymple, (A.D. 1811,) and never conclusively established until the subsequent decision by the House of Lords of the case of Macadam (*d*). In the former of those two cases, writings, secretly exchanged between a gentleman and lady in Scotland, without the knowledge of any other person, were held by the English Court Matrimonial to have constituted a valid marriage, so as to annul and render bigamous a marriage celebrated four years afterwards *in facie ecclesiæ* between the same gentleman and another lady in England, although the parties had kept the nature of their relation to each other, as expressed in those writings, from the knowledge of their families and the world, and had never lived together as husband and wife. In the case of Macadam, the marriage was held by the Scottish Court, and by the House of Lords, to have been well constituted for the purpose of giving all the rights of widowhood to the woman, and of legitimacy to children previously born, by words of present matrimonial consent exchanged between a man and a woman with whom he had, until that moment, lived as his mistress; the man contemplating suicide at the time, and committing it immediately after the words were spoken.

These cases considered by Mr. Frazer and others to be *pre-contract, not marriage* according to the law as formerly understood.

According to the opinion of those Scottish jurists, to whom we have referred, these ought to have been deemed cases, not of actual marriage, but of mere pre-contract; and the view which they maintain is, that the law of Scotland, before those decisions, was generally and rightly understood to be the same with the law of England previous to Lord Hardwicke's Act (26 Geo. 2. c. 33.), as that law has been expounded by the decision of the House of Lords in the case of *The Queen* v. *Millis*; according to which, no *actual marriage* could take place without solemnization by a duly ordained clergyman, (Presbyterian orders being, of course, recognized in Scotland); but the Courts would compel the specific performance of a pre-contract (*e*) of marriage; and such pre-

(*a*) App., p. 92. (*b*) *See* Mr. Maclaren's evidence, App., p. 155. (*c*) App., pp. 60, 128, 137.

(*d*) The case of Macadam had been decided in Scotland in 1806 (the Court not being unanimous), and was still under appeal in 1811.

(*e*) This law as to pre-contracts having been partially changed in England by the statute 32 Hen. 8. cap. 38., was restored by 2 & 3 Edw. 6. cap. 23., and was finally abolished by Lord Hardwicke's Act (26 Geo. 2. cap. 33.) In Ireland a like state of law was first modified in 12 *Geo.* 1. *cap.* 3. *sects.* 6, 7, and afterwards abolished by 58 *Geo.* 3. *cap.* 81.

contract was held to be a diriment impediment to any subsequent marriage of either of the parties thereto, except with the other of them.

(3.) *Irregular Marriages, by Promise, subsequente copulâ.*

Promise *de futuro, subsequente copulâ.*

Under this category of cases, the law of Scotland, as it is commonly understood, practically treats persons as married, who have never interchanged any present contract to become thenceforth husband and wife. A mere *promise* of future marriage is, according to the present law of Scotland, of no greater force or effect than a similar promise in England or Ireland; and mere carnal intercourse, without more, is in Scotland, as in England or Ireland, concubinage, and not marriage. Even to carnal intercourse, preceded by a promise of future marriage, no greater effect is ascribed, unless such promise is proved by writing under the hand of the party, or by his or her confession upon oath. If it were given ever so publicly, in the presence of any number of credible witnesses, the testimony of such witnesses could not be received to prove it, for the purpose of making the subsequent intercourse marriage. But to mere carnal intercourse, if preceded by a *written* promise of future marriage, or by a promise, *afterwards confessed upon oath*, the effect of marriage is practically given.

Must be proved *by writing or oath of party.*

Oath cannot be required if it would invalidate a subsequent marriage.

In a proceeding taken to establish marriage upon this ground, the defender may be called upon to confess or deny the promise on oath, if he has not, in the mean time, contracted marriage with any person other than the pursuer. But he cannot be put to his oath for such a purpose, when the effect would be to invalidate another subsequent marriage. This protection is not given by the law to the innocent victim of the later marriage, if the other mode of proof, viz., writing, is resorted to. In that case, the promise *subsequente copulâ* will invalidate the later marriage, however solemnly it may have been contracted, and however secret the previous promise and the intercourse following upon it may have been kept.

The observations of Lord Deas, in the case of Leslie, upon this state of the law, appear to us important. After stating (in terms which we have already quoted) the general doctrine of Scottish law as to the constitution of marriage by consent, he adds,—

Observation of Lord Deas in *Leslie* v. *Leslie.*

"What is still more remarkable is, that even consent is not essential to marriage. A promise of marriage *subsequente copulâ*, makes marriage without inquiry, whether the parties meant marriage or not. . . . It may or may not be, that the law in such cases presumes consent. I am speaking, not of presumption, but of fact. And whatever the law for its consistency may presume, there may unquestionably be a marriage by promise *subsequente copulâ*, . . . where, in point of fact, consent has never been interchanged, and where the parties do not even know that the law holds them to be married persons. In the case of *Reid* v. *Lang* (H. L., 14th May 1823), where a marriage was held constituted by promise *subsequente copulâ*, the Lord Chancellor observed—'In all probability the girl did not know that *copula* would make a marriage.' In the similar case of *Sim* v. *Miles* (20th November 1829), the Lord Justice-Clerk Boyle observed,—'Ignorance of the law cannot affect the question. We disregarded it 'entirely the other day in the case of *McLean* v. *Elder*, where the woman wrote letters, 'showing that she did not think she was married.'"

Question whether promise *cum copulâ is marriage*, without a judicial sentence.

We have said that "the effect of marriage is practically given" to a promise of future marriage, *subsequente copulâ*; because, among other remarkable peculiarities of this doctrine, it seems to be to this day a doubtful and unsettled point in the law of Scotland, whether the concurrence of these two facts is sufficient without more to constitute marriage, or whether they merely constitute such a case of pre-contract as to be capable of being enforced on the principle of specific performance by a court of justice, and to be a diriment impediment in the meantime to a marriage between either of the parties to such pre-contract and any other person not a party to it. The former opinion (viz., that the concurrence of these two facts, *per se*, constitutes marriage) seems to be that most commonly entertained; and, according to this view, a presumption is raised, (either by what is called a "fiction," or by a fixed and arbitrary rule of law,) that at the moment of the *copula* a present interchange of consent to be husband and wife, in performance of the previous promise, took place between the parties. But the contrary opinion, viz., that these circumstances amount to no more than a binding pre-contract, which requires a judicial sentence before it can become actual marriage, (which judicial sentence can only be pronounced during the lifetime of both parties,) is maintained by very high authorities; among whom we may mention the late Lord Moncreiff, and his son, the

Judicial sentence in lifetime of both parties held necessary by

Lord Moncreiff and others.

late Lord Advocate of Scotland (*a*), and also Mr. Fraser (*b*), the author of a learned and popular work upon the Marriage Law of Scotland. Lord Moncreiff, in a judgment delivered in the Court of Session, said,—

"If the material fact" (*i.e.*, of a present interchange of consent,) "is proved by the documents, it is *very* marriage, without the necessity of any process; and the children of such a union could establish their legitimacy after the death of one or both of their parents, though no declarator of marriage had ever been brought in their lifetimes. In this, the case entirely differs from another, which is often confounded with it, that of a promise of marriage, *subsequente copulâ*, which *by due process may be reduced into marriage*, as furnishing a legal ground for declaring a marriage to have been thereby constituted. But the difference is great in this point, *that declarator is essential to the constitution of marriage in that case, and that if no such declarator be brought in the lifetime of both parents the marriage can never be established afterwards.* It is not at all so in regard to written declarations of marriage *de presenti*, or declarations of such consent to marriage *de presenti* before witnesses. These may be effectually proved at any time; and the only difference between them is, that where the matter is disputed the writings prove the case at once, if the genuineness of them be proved or admitted, whereas of course parole evidence of verbal declarations, which are denied, must be adduced"(*c*).

The point still doubtful.

The question, which of these two opinions is right, is still controverted, and has never been made the subject of legal decision. According as it may be determined one way or the other, the actual *status* of a man and woman, living together after a written promise of marriage, but without any *present interchange* of matrimonial consent, or decree of declarator, is that of marriage, or that of concubinage; and of their children, legitimacy, or illegitimacy.

Habit and Repute.

Habit and repute not marriage, but evidence of marriage.

"Habit and repute," or the reputation of being married persons, acquired among relatives, friends, and acquaintances, by persons living together as husband and wife, is often spoken of as if it were another distinct mode of contracting marriage in Scotland. This, however, is not a correct view of the law; such reputation does not constitute, it is merely evidence of marriage; and the principle on which it is admitted as such evidence is not peculiar to the law of Scotland, but is common to every system of enlightened jurisprudence.

Mr. Fraser's statement.

Consistently with this principle, Mr. Fraser (*d*), with indisputable correctness, has stated in his evidence before us, that, "*if it be admitted, or if it be the necessary result from* "*the proved facts of the case, that consent was not interchanged*, then no amount of "cohabitation and habit and repute will be sufficient to make marriage according to "the law of Scotland. These two things, in short, only create a presumption, which "may be set aside, and the burden of proof shifted upon the same ground as it is held "to be shifted by foreign laws." "There seems to be a notion afloat that the law of "Scotland tolerates this, that a man, by living for 20 years with a woman and recognizing "her as his wife, going to church with her and sitting at table with her, where he "speaks to her and treats her as his wife, he will thereby by these proceedings gradually "slide into marriage with her. Now there is not the slightest countenance for that "notion in our law" (*e*).

Practical effect of the doctrine.

Judging, however, from the language and arguments of several of the witnesses before us, and also from the *dicta* in several reported cases, we are led to conclude, that there may be, and that there is, a considerable difference between this strictly logical view of the value of evidence of matrimonial reputation in the Scottish law, and the popular view of the same subject; and that the popular view may perhaps indicate more truly than the theoretical doctrine the practical working of the law of habit and repute in Scotland. Evidently there is a wide practical difference between the effect of cohabitation with reputation of marriage, in a country the law of which requires some definite and solemn acts or act for the constitution of the contract, and its effect (though still considered merely as evidence) where no such solemnity is required, but where the relation may be constituted at any time by the private consent of the parties. In the former case, the inquiry is, whether a certain external fact, independent of intention, did or did not happen; in the latter, it is really an inquiry into the intention, with

Intention is the subject of inquiry.

(*a*) App., p. 69. (*b*) App., 139. (*c*) App., p. 69. (*d*) App., p. 137. (*e*) App., p. 140.

which a certain series of acts were done. The most express declarations, oral or in writing, by both parties, that they are husband and wife, will not make them so, unless the judge is satisfied that the inward intention of their minds was in accordance with those outward words or acts. This has been held, not only as to declarations concerning the past, which are mere elements in the proof of cohabitation with repute of marriage, but even as to *verba de præsenti*, which if sincerely spoken would have themselves constituted marriage. In the case of *Jolly* v. *McGregor* (3 Wilson and Shaw, p. 85), a marriage irregularly celebrated before a clergyman of the Established Church was set aside as a nullity, because the Court was satisfied that the parties had no real matrimonial intention, and never regarded the ceremony as binding. Lord Glenlee (in the Balbougie case) (*a*) said (and the House of Lords in the same case affirmed his doctrine):—"The "cohabitation under the married character must be uniform and consistent, for a few "instances in which a man behaves to a woman as his mistress will do away a thousand "in which he addresses her as his wife. A man without the least thought of marriage "may behave to his mistress as if she was his wife, may not choose to contradict her "before strangers who call her such, nor to expose at all times the nature of the "connexion."

Without intention, an irregular ceremony is not marriage.

It is impossible not to perceive the copious elements of doubt and uncertainty, which the application of the doctrine of habit and repute may introduce, in a variety of circumstances, under such a state of the law. An opinion, however, is entertained by some, whose views are entitled to much consideration, that instead of producing, upon the whole, any evil effect, the practical tendency of this state of the law is to discourage concubinage, and to promote regular marriage. It appears to be thought, that the law would sometimes imply marriage in such doubtful cases, although the parties themselves may not really have made up their minds to be married, and would, if they were required to say positively and conclusively whether they were married or not, decline to give an affirmative answer to that question: and that the risk of such a construction of an equivocal course of life may tend to diminish the frequency of illicit connexions. It was suggested to a witness of great authority, during his examination before us (*b*), that "nobody could be the husband of a wife by habit and repute except by his own "will; that it was his own conduct which induced the reputation; that, if he wished "not to be married, he would not so act as by habit and repute to be a husband; that, "as it depended on his own will whether he would be married or not, there seemed to "be no reason to suppose that, having the will to marry, he would not do whatever "the law might require for that purpose." The reply of the witness was, "I under-"stand that in the metaphysical view; but as applied here, it is reasoning in a circle. "You may say, that, if the presumption raised by habit and repute be a true one, the "parties will prove the fact by avowing it. But it seems to me clear, that, if that "reasoning be logically carried out, the presumption of law is useless. *It is only useful* "*where the fact is doubtful;*"—adding, that, as, according to his view of the practical effect of the presumption, "*connexions continued in concubinage*," (*i.e.*, under the pretence or reputation of marriage,) "*necessarily would become marriage unless there* "*were a clear intention to the contrary*, the parties *would have no interest* to continue "in that state, and not to be married in the face of the Church." Another witness (Principal Barclay) (*c*) considered that, in some cases, in which the status of marriage might be established by law, "it was very possible that both the parties did *not* intend "marriage; that one or both of the parties may have been attempting to impose upon "the other." We have thought it right to state these views: although, for reasons which will appear in the sequel of our report, we are not ourselves satisfied of their soundness.

But practically habit and repute may make marriage without intention.

Mr. Moncreiff's evidence.

Principal Barclay's evidence.

Statistics of Regular and Irregular Marriages.

While the law restricted the power of solemnizing marriage regularly to the clergy of the Established Church "regular marriages," (according to the evidence of Dr. Stark,) (*d*) "in many parishes and districts, became the exception and not the rule;" and he adds, "it may be safely assumed that, during the whole of the 18th century, a third of "the marriages in Scotland were contracted irregularly; and even far into the 19th "century the number of marriages contracted irregularly was very great."

Among other remarkable effects of this state of things was a practice (indicative of a prevailing sense of the insecurity, without some public authentication, of irregular

(*a*) *Baron Hume, Dict.*, p. 376.
(*b*) App., p. 67, evidence of *Mr. Moncreiff*, Question 59.
(*c*) App., p. 135, Question 983.
(*d*) App., p. 3.

marriages) of using the penal Acts, and particularly those of 1661, (chapter 34,) and 1698, (chapter 6,) against clandestine marriages, for the support and protection of the system which they were intended to suppress. By the former of these statutes, the parties to such marriages were liable to be imprisoned for three months, or to pay a fine, according to their rank. But these penalties were evaded by collusive proceedings, in which persons desirous of contracting an irregular marriage, appeared before the magistrate of a burgh, or a justice of the peace, who pronounced, on their confession, a sentence, finding that they had contracted a clandestine marriage; imposing a fine, which was merely nominal; and reserving the question, whether they ought, or ought not, to be imprisoned. An extract of this sentence, from the Court books, was delivered to the parties, and regarded by them as their marriage certificate (*a*).

Mr. Fraser (*b*) states that this practice only existed in three or four places in Scotland: Annan, Dumfries, Rutherglen, and the Canongate of Edinburgh; that its prevalence was mainly due to Lord Stowell's decision in the case of Dalrymple; and that he has not heard of it for the last 20 years. By the Registration Act, however (17 & 18 Vict. c. 80.), the continuance of this practice, as late at all events as 1853, seems to be recognized.

A great change followed upon the liberal legislation of 1834: and we learn from Dr. Stark (*c*), (whose testimony, in this respect, is confirmed by every other Scottish witness,) that from the time when ministers of all denominations were permitted to perform regular marriages, a state of public opinion began to grow up, under which an irregular marriage was regarded as "implying a stigma;" and that at the present time (Lord Brougham's Act having entirely put an end to English Gretna Green marriages,) irregular marriages have become very rare indeed. Dr. Stark reckons the present proportion of irregular to regular marriages as not more than one in 1,000: the total numbers of irregular marriages *registered* between 1854 and 1861 being—9 in 1855; 36 in 1856; 7 in 1857; 27 in 1858; 17 in 1859; 16 in 1860; 25 in 1861; and in 1862, 27 out of a total number of 20,544 registered marriages in Scotland (*d*). In the last Registrar's return, at the time of our inquiry, the number was 25 out of a total of about 20,000 (*e*). It must be remembered, however, that no irregular marriages can be registered, except such as are (1) the subjects of prosecution (real or nominal) under the Acts against clandestine marriages, or (2) ascertained by decrees of declarator, or (3) registered under a sheriff's warrant, upon the joint application of both parties, within three months after the marriage is contracted. It is, therefore, quite impossible to rely upon the General Registry as furnishing any data, upon which even a loose estimate of the total number of irregular marriages actually contracted can be formed. They are stated, by some of the witnesses before us (*f*), to be more common among the poor than among the higher and middle classes; and of the frequency of their occurrence among the poor, the number of litigated cases is certainly no test. The committee of the Synod of the United Presbyterian Church of Scotland state (*g*), that "in "cases of disputed marriage, the present law, which renders actions of declarator of "marriage competent only before the Supreme Court, involves a process so expensive, "as *in many cases* to render its benefits beyond the reach of the humbler classes, to the "deepest injury of the wife and children; and that to remedy *this great evil* jurisdic- "tion should be extended to the sheriffs to dispose of such cases, subject to appeal "to the Supreme Court." It seems, however, to be generally agreed, that the proportion of the total number of irregular to the total number of regular marriages is extremely small.

Upon the question, whether those ambiguous relations, as to which doubt may be felt whether they are marriage or concubinage, are frequent in Scotland or otherwise, the opinions of persons who ought to be well informed widely differ. The number of cases litigated in the Courts of Law is certainly not very large, though some of them are very remarkable, and have attracted a large share of public attention. Mr. Moncreiff (*h*) in his evidence before us, says: "It is said that a man does not know whether he is "married or not in Scotland; but I have seldom met a man who was in that position." On the other hand, Lord Deas, in Leslie's case (*i*), said: "The consequence of these "peculiarities in our marriage law is, that there are at all times in Scotland a large "number of individuals who cannot tell whether they are married or unmarried, "and a still larger number of children as to whom no one can affirm whether they are

(*a*) App., p. 73, evidence of Mr. Anderson. (*b*) App., p. 137. (*c*) App., p. 3.
(*d*) App., p. 3, and see Mr. Seaton's evidence, App., p. 91. (*e*) App., p. 63. (*f*) App., pp. 133, 173.
(*g*) App., p. 47. (*h*) App., p. 64. (*i*) Court of Session Reports, 2nd Series, XXII., p. 993.

"legitimate or not." We do not refer to this opinion as judicial or authoritative; but the fact, that it has been entertained and publicly expressed by an eminent Judge of the Court of Session, is certainly not without significance.

Registration.

Registration.

The general system of civil registration in Scotland (there being no provision made by law for any Ecclesiastical Marriage Registers, though the session clerks keep books, in which they enter the proclamations of banns,) is, in most respects, similar to that in England and Ireland. There is a General Register Office in Edinburgh, under a Registrar-General; and each parish in Scotland (subject to a power in the Sheriff to divide or unite parishes, &c.) is a district, within which there is a resident registrar elected by the parochial board, or, in burghs, by the town council; the session clerk, if duly qualified, being usually preferred for that office.

Registration of regular marriages.

Parties about to contract a regular marriage must obtain from the district registrar a schedule, containing the particulars to be entered on the register. This they are required to produce, together with the certificate of proclamation of banns, to the officiating minister, or (in the cases of Quakers and Jews) to the registering officer of Quakers, or the secretary of the synagogue of Jews. At the time of the celebration this schedule (duly filled up) is required to be signed by the parties, by the minister or person officiating, and by two witnesses; and the married parties are required, (as in Ireland in cases of Roman Catholic marriages under Mr. Monsell's Act), to return the schedule, so filled up and signed, for registration, to the district registrar within three days after the marriage, under the penalty of 10*l.* on the husband, or (if he makes default in payment) on the wife. The registrar enters these schedules in duplicate registers, and afterwards transmits them, through the sheriff, to the Registrar-General.

The parties may, if they think fit, require the attendance of the district registrar at the marriage, in which case it is at once recorded in his register. But this, in practice, is rarely done.

In Scotland, as in Ireland, the system of requiring the parties themselves to return the schedule to the registrar (no duty in this respect being imposed upon the officiating minister), does not appear to be entirely successful. We are informed (*a*) by Mr. Seton (for many years an assistant registrar), that "in the case of the poorer classes the schedule "is sometimes forgotten, and kept for weeks or months;" and that there have been cases of parties going away suddenly to America without transmitting the schedule.

Registration of irregular marriages.

Marriages established by conviction before magistrate, or by decree of Court, may be registered.

The only provisions made by law for the registration of *irregular* marriages are contained in 17 & 18 Vict. c. 80. ss. 48. and 49., and in Lord Brougham's Act, 19 & 20 Vict. c. 96. Under the former Act, persons *convicted* before a magistrate or justice of the peace of an irregular marriage, are authorized and required to register such marriage in the parish in which the conviction is obtained; and the magistrate or justice is bound under a penalty to give notice of the conviction to the district registrar. And in case of any irregular marriage being established by a decree of declarator of a competent court, either party is authorized to register such marriage in the parish of the domicil, or of the usual residence of the parties; and the clerk of the court is required, under a penalty, to give notice of such decree to the district registrar.

Also other irregular marriages within three months after they are contracted.

Under Lord Brougham's Act, any parties who have contracted an irregular marriage may, *within three months after such marriage*, (not later), *jointly* apply to the sheriff or sheriff substitute of the county where the marriage was contracted; and, on being satisfied of the fact of marriage, he may grant his warrant to the registrar of the parish or burgh where the marriage was contracted, who shall enter such marriage in his register, and grant a certificate thereof to the parties.

For the registration of irregular marriages, which have been the subject of a conviction or of a decree of declarator, a payment of 20*s.* is required. For registration upon the application of both parties, within three months, under Lord Brougham's Act, a payment of 5*s.* only.

The registers, in the custody of the district registrar, are kept in duplicate; and one of the duplicates, after examination by the sheriff, is annually transmitted to the Registrar-General, and permanently preserved in his office.

The registers kept according to law are of course receivable as legal evidence of marriage.

(*a*) App., p. 94.

DESIRABLENESS OF UNIFORMITY IN THE MARRIAGE LAWS OF THE UNITED KINGDOM.

This being the state of the marriage laws of the several parts of the United Kingdom, and their manner of operation, it must be universally conceded, that, if it be possible to reduce them to one uniform system, such an object is in the highest degree desirable. "No one," says Mr. Moncreiff (*a*), can doubt the excessive inconvenience of having "different systems of constituting the most important of all social relations, prevalent in "countries so nearly identical in character and interests, and so closely allied, both by "natural and political relations. The object of assimilation is important and desirable, "beyond doubt; but it is far from being easy of attainment."

After the most careful and deliberate consideration of this subject, we have come to the conclusion, that the difficulties in the way of the attainment of this object are not insuperable; and that it is the duty of the State to make an earnest endeavour to overcome them. We agree, however, in the opinion strongly expressed to us by several witnesses from Scotland (*b*), that the means of assimilation are not to be found in the mere extension of the marriage laws of England or Ireland to that country. Of the inefficient character, and unsatisfactory operation, of the system of banns and other parts of the law of England, which have for their object the prevention of improvident or clandestine marriage, many English witnesses have spoken before us (*c*); and Mr. Boyd Kinnear (*d*) and Mr. Fraser (*e*) have criticised, not unjustly, the complexity of that law, and the elements of uncertainty introduced into it by some of the rules, on which the validity or invalidity of English marriages is made to depend. To the marriage law of Ireland, many of the same objections apply, and, with regard to mixed marriages, with augmented weight. Mr. Wallace (*f*), speaking on behalf of the Irish Wesleyan Methodists, (though alleging no grievance, specially affecting that body, and agreeing in substance with witnesses of other persuasions,) says:—

"We all complain of the state of the marriage law, as it affects the whole community, very much indeed . . . . . In the first place, we are dissatisfied that the law itself should be divided into so many parts, that is, that instead of having a law for all parties, the law should be made in reference to such a number of parties; we complain in the first place, that the laws affecting the celebration of marriage are so numerous; we complain in the second place, that some of them are very hard to understand; that it is not very easy to say to what extent some of the old Acts have been repealed by amendments that have passed afterwards; that the state of the marriage law itself is in some respects obscure, that it is anomalous, if not quite, at least nearly beyond expression; for instance, in addition to the number of Acts that regulate the celebration of marriage, marriage is celebrated in Ireland lawfully in several different ways: there is one law for the Established Church, one for the Presbyterian, one for the Non-conformists, one for the Roman Catholics, one for the Quakers, one for the Jews, and a law for civil marriages where there is no religious service, so that in reality there are seven different methods of celebrating marriages legally in Ireland. Of course, though we do not specially complain, we do complain that that should be the state of a law which we conceive should be very simple and clear. Then there are not only these different methods, but the anomalies of them are very striking; for instance, it is a felony on the part of a parochial clergyman to celebrate a marriage that may be lawfully celebrated by a Roman Catholic priest. It is felony for the Roman Catholic priest to celebrate a marriage that may be lawfully celebrated by a parochial clergyman, a Presbyterian minister, and a Non-conformist minister; and it is felony for a Presbyterian minister and a Non-conformist minister to celebrate a marriage that may be lawfully celebrated by a clergyman of the Established Church. We conceive that, with such a state of things, though no one denomination as compared with another denomination has any special right to complain, each one has a general right to complain."

On the other hand, it is manifestly impossible, after more than a century's experience of a contrary course of legislation, the main principles of which have been generally accepted and approved, to introduce the present marriage law of Scotland, unaltered, into England and Ireland, and so return to that state of things which preceded and caused the passing of Lord Hardwicke's Act in 1753.

(*a*) App., p. 59.
(*b*) App., pp. 4. 47, 59, 113.
(*c*) App., pp. 1, 2, 7, 8, 15, 16, 36, 38, 39, 53, 70–166.
(*d*) App., p. 48.
(*e*) App., p. 141.
(*f*) App., p. 151.

It remains, then, (laying aside national partiality and prejudice, and deriving what light we can from the experience, the habits, and sentiments of every part of the United Kingdom,) to consider what are the principles on which a marriage law, applicable to all parts of that kingdom, ought to be founded; and to bring the existing laws, where they differ from each other, to the test of those principles.

PRINCIPLES OF A SOUND MARRIAGE LAW.

(1.) We agree with the views, well expressed by Mr. Boyd Kinnear, in the following passage of his evidence. A good general marriage law, he says (*a*), "ought to embrace the "maximum of simplicity and the maximum of certainty. Of simplicity, because it affects "every class, and almost every person, the most humble and illiterate as well as the most "exalted or learned, and because it has to be known and acted on in the absence not "only of legal advice but often in the absence of even ordinary common sense counsel. "Of certainty, because it affects a contract and social relation the most important "that can arise between human beings, because it affects the foundations of society "itself, and influences the fate, it may be the eternal fate, of innumerable individuals.

"It is thus not an unreasonable practical test of the propriety of any marriage "code to say that its provisions ought to be such as every woman not only can "understand by study, but is correctly acquainted with through the common under-"standing of society; and that its security should be such, that all persons, if honestly "intending to marry, should be able to place their contract, by adoption of the ordinary "means, beyond the reach of doubts."

(2.) We agree also with the English Roman Catholic Bishops (*b*), that, "As well for the sake of civil order, as of morality, as far as is consistent with securing correct information "preliminary to the marriage contract, and with ensuring due evidence of the marriage "contracted, it is of the utmost importance that every facility" (by which we understand every proper and reasonable facility) "be given for celebrating marriage, "and especially as far as the poorer classes are concerned."

(3.) We think, consistently with this principle, that it is the duty of the State to discourage, and place obstacles in the way of sudden and clandestine marriages, both for the sake of inducing forethought and deliberation generally, in the formation of indissoluble relations, upon which the happiness, usefulness, and morality of life depends, and also for the special purposes of preventing incest and polygamy, and enabling parents and guardians to protect minors from improvident and unsuitable connexions.

(4.) We think that the State should be absolutely impartial and indifferent, as between the members of different religious denominations; and (while leaving to private conscience, or to the spiritual authority acknowledged by each church or persuasion, the determination of all questions properly belonging to the province of theology) should found its legislation, as to marriage, upon the necessity and duty of regulating its civil conditions and effects.

(5.) At the same time, we entirely concur in the opinion of the late Bishop of Derry (*c*); who considered it both the wisdom and the duty of the State to associate its legislation, on this subject, with the religious habits and sentiments of the people, and to obtain, as far as possible, the religious sanction for the marriage contract. "Being," he said, "a "contract of the highest possible importance, on the faithful observance of which the "welfare of the community so largely depends, and the breach of which entails so many "miseries, it is clearly the interest of the Commonwealth that the idea of it should be "contemplated with the utmost solemnity, and that the strongest and most influential "motives should be called into action in connexion with it; on which account, it is in "almost all ages and countries accompanied by the sanction of a religious ceremony, and "notedly so among all Christian communities from the earliest period."

Founding ourselves upon these principles, we proceed to consider the first two subjects, which present themselves in the natural order of our Inquiry, viz., (1.) the law relating

(*a*) App., p. 47. (*b*) App., p. 44. (*c*) App., p. 34.

to the capacity of persons to contract marriage; and (2.) the question, whether any solemn or formal act should be required to constitute or to authenticate the contract as between persons competent to enter into it.

(1.) *The Capacity of Persons.*

The laws of all parts of the United Kingdom, as to the capacity of persons to contract marriage, being already uniform, except on one point, their assimilation would appear to be easy, by merely repealing the prohibition, in Scotland, of the intermarriage of persons declared, by the sentence of a Divorce Court, to have been guilty of adultery together.

Scotch prohibition in cases of adultery.

We think that this prohibition ought not to continue. The legislature declined to introduce any similar prohibition when the present divorce law was established in England, and as it now exists in Scotland, it is one of an arbitrary nature, depending on the terms of the sentence, not on the mere fact of adultery. Such penalties are found by experience inefficient to prevent evil, but they may prevent in some cases the only possible reparation of evils, past and irremediable, and it may well be doubted whether they are in that respect of any public advantage.

Conflict of Law of Divorce in the different parts of the United Kingdom.

In Scotland, as in all other parts of the United Kingdom, persons under the bond of a prior subsisting marriage are disabled from marrying. There are, however, circumstances under which, upon the same admitted state of facts, the question whether a particular person is or is not in that category, might be answered in one way by a Scotch, and in another way by an English or Irish Court; and the House of Lords itself might be compelled, upon appeal, to hold a marriage, bigamous in England or Ireland, to be lawful in Scotland.

It is a settled point in the law of Scotland that a sentence of dissolution of marriage (on proof of facts constituting sufficient ground for dissolution of marriage according to that law, which admits of more latitude in this respect than the law of England,) may competently be pronounced by a Scottish Court, between persons having their legal and matrimonial domicil and ordinary residence in England or in any other country, who have only resided in Scotland for a very short space of time, who have resorted thither (perhaps by mutual arrangement) for the express purpose of obtaining such a sentence, and who have no intention of remaining there after their divorce has been obtained.

The English Courts, on the other hand, (with which, as we apprehend, the Irish Courts agree,) refuse, under such circumstances, to acknowledge the validity of such a Scottish sentence; they treat a marriage subsequently contracted in England by either of the parties so divorced as bigamous, and the issue of such subsequent marriage as illegitimate.

If indeed the suit were *bonâ fide* and the legal domicil of the husband Scotch at the time of the divorce, although the marriage might have been originally English, the English Courts, according to the most recent authorities, might regard the marriage as effectually dissolved by a Scotch sentence; but it may, perhaps, be considered still an unsettled point, whether they would recognize a *bonâ fide* temporary residence of both parties in Scotland, unconnected with any purpose of obtaining a divorce (but without a legal domicil in that country), as sufficient to enable English persons, when divorced by a Scottish sentence, to marry again in each other's lifetime.

We think that this conflict between the laws of England and Ireland on the one hand, and that of Scotland on the other hand, ought to be removed by legislative enactment; that the legal validity and effect of a sentence of dissolution of marriage, pronounced in a *bonâ fide* suit by a Court having proper jurisdiction over the parties and the cause, ought to be the same throughout the United Kingdom; and that the resort of persons domiciled and ordinarily resident in one part to the Courts of another part of the United Kingdom, for the sake of greater facility of divorce, ought to be prevented by proper limitations upon the jurisdiction of such Courts. The subject of divorce not being referred to us, we abstain from offering any recommendation as to the particular alteration which it may be proper to make in the law; but as bearing upon the question of the capacity of persons to marry, we have considered that this point could not properly be left by us without observation.

The age of legal capacity to marry has been fixed at a period much earlier than that at which marriage can, in any case, be prudent or desirable; but it rests upon the principle, that marriage ought not to be made impossible by law between those who are capable by nature of being the parents of children. It is difficult to deny the force of this reason, or to overrule it, without the risk of introducing more serious evils than those which have been proved to result, in practice, from this state of the law. It might have been supposed that in Scotland, where the consent of guardians to the marriage of minors is not required, instances of immature marriage would be frequent; but, so far as our information goes, this is not the case. Such marriages are said to be most common in the cotton districts of Lancashire. In a work on those districts (cited to us by the Rev. Mr. Wilks) (*a*), Mr. Arnold says,— Age of capacity.

"The census returns of 1861 show that in Bolton 45 husbands and 175 wives, were "coupled at the immature age of 15 and under. In Burnley there were 51 husbands "and 147 wives, and in Stockport 59 husbands and 179 wives, in the same category. "The same reliable evidence of the census shows that from 15 to 20 is the age at which "a considerable number of the male operatives, and a still greater number of the female, "are married. No one who has ever attended Manchester Cathedral will forget the "ceremony of asking the banns of some hundred of names; 19 to 22 in the male sex, "and 17 to 20 the female, being the usual matrimonial ages." Mr. Wilks was also informed by the late Canon Stowell (the incumbent for many years of one of the largest parishes in Manchester) that very few "of the young persons in the factories ever "think of consulting their parents," when contemplating marriage. This state of things is certainly not satisfactory; but there can be no doubt that it is mainly due to the premature independence, and emancipation from parental control, of a large proportion of the youth of these populous towns; and a law, which disabled such young persons from marrying at the ages at which many of them do now actually marry, without giving them the benefit of any effective guardianship and oversight, could hardly be conducive to their moral improvement.

The law of the Commonwealth under Cromwell required that males should be 16 and females 14 to be capable of marriage. The present law of France requires the male to have attained the full age of 18, and the female that of 15. If it were necessary to make a choice between these two rules, we should prefer the law of France to that of the Commonwealth; but it seems to us better, upon the whole, to retain our present law, in this respect, unaltered, than either to fix the stigma of necessary bastardy upon all children of parents below those ages, or to introduce the uncertainty which would arise from treating marriages, contracted under those ages, either as void unless ratified by subsequent matrimonial cohabitation, or as not void, but voidable by legal proceedings.

With respect to the prohibited degrees, we have received little evidence, and what we have received reflects (as might be expected) contrary opinions. Having regard to the circumstance, that this was the subject of inquiry several years ago before a former Royal Commission, the report of which was followed by much public controversy, and by frequent ineffectual attempts at legislation; considering, also, that these attempts were based in part upon theological arguments, and in part raised social questions involving other domestic relations besides that of marriage, we have felt that the suggestion of any change in this respect (even if we ourselves had been satisfied that it was desirable), would be foreign to the main purposes of our inquiry, and calculated to throw needless impediments in the way of the other changes which we recommend. Prohibited degrees.

(2.) *Inquiry whether any Solemnity should be required.*

The question whether the law should require in Scotland (as it does in all other parts of the United Kingdom), some kind of solemnity to constitute or authenticate the contract of marriage, is one of fundamental importance to our inquiry; for, if this cannot be done, all hope of establishing one marriage law for the whole of the United Kingdom must be abandoned.

(*a*) App., p. 18.

The system of irregular marriage, now permitted by law in Scotland, appears to us to be irreconcilable with the principle that, in a contract of this importance, the law should aim at the attainment of the greatest possible degree of *certainty*. To whatever extent its operation may be narrowed or corrected by the sentiments and habits of the people, it seems to us undeniable that it opens the door to much doubt and uncertainty. It is no answer to this objection, that in Scotland (as probably in every other country), those who wish to place their marriage beyond the region of doubt have no difficulty in finding out the proper way of doing so. Still less is it satisfactory to be assured (*a*), that "the cases in which doubt or difficulty can creep in, in Scotland, are reduced to a class "with which it is not easy to have much sympathy. They are cases in which each "party has been endeavouring to outwit the other by using or allowing ambiguous "expressions, and in which, therefore, each has *known* that a certain risk was being run; "or they are cases in which both parties have not truly meant an absolute marriage, but "have tried to achieve a conditional arrangement which for certain purposes might be "used as a marriage, and yet in certain events be disclaimed, and in which, therefore, "both must have known the great risk of the contract being declared illegal." Even if this were a description really adequate to comprehend all the causes of uncertainty which may operate under such a state of the law, and if the limited number of celebrated marriage suits in the Scotch Courts could safely be appealed to as evidence of the rarity of such cases, we should still think it a great public evil, that the social position of individuals, the status of descendants, the honour of families, the validity of matrimonial engagements solemnly entered into under the belief that there was no impediment, the succession to dignities and estates, should be capable of depending upon such obscure and complicated issues of law and fact as those, which, in several recent instances, have divided the opinions of eminent judges in the Court of Session, and in the House of Lords itself. If these cases are (as we trust) rare and exceptional, the evil may be of limited extent, but there is so much the less reason why the state of law, in which they originate, should continue:—If, on the other hand, they are numerous, the evil must be one of great magnitude, requiring the application of an immediate remedy.

It has already been seen that, as to one important part of this system (the doctrine of promise *subsequente copulâ*), it is, to this day, a disputed point of law whether a certain state of facts does or does not *constitute* marriage; and another question equally momentous, (the doctrine of marriage *per verba de præsenti*, without the intervention of a clergyman,) if now removed out of the category of disputed points of law, remained within that category till an extremely modern date. Nor can it be truly said that public opinion in Scotland has been at any time favourable to irregular marriages. By the older legislation, before the Union, every kind of clandestine celebration of marriage was prohibited, under severe penalties. In 1754, after the passing of Lord Hardwicke's Act, the Judges of the Court of Session, in obedience to an Order of the House of Lords, prepared a Bill for the reform of the Scotch marriage law, (on the same principle, it is believed, though the bill is not now extant, with Lord Hardwicke's Act,) which was laid upon the table of the House, but not then further proceeded with. In 1772, Lord Hailes, a great authority, in an opinion delivered from the bench, after observing that the law enabling marriage to be proved "from consent, without the intervention either of "Church or State," was derived from the rules of the canon law as it stood before the era of the Council of Trent, said: "All the European nations, Scotland excepted, have "departed from the more ancient canon law, and have required the interposition either "of Church or of State, or of both, to validate a marriage. Thus, what was the law "of all Europe, while Europe was barbarous, is now the law of Scotland only, when "Europe has become civilized" (*b*).

In 1849 the late Lord Rutherford (then Lord Advocate) introduced a Bill for the reformation of this state of the law, which passed the House of Commons; but, meeting with considerable opposition in Scotland, it was afterwards relinquished. When that measure was introduced, the legislation of 1834 had been in force for only 15 years, and the subsequent lapse of 18 years more has enabled the change of popular habits and sentiments on the subject of regular marriage, which resulted from that legislation, to become settled and permanent. Lord Brougham's Act for the abolition of Gretna Green marriages has since been passed, with very general concurrence, and has been

(*a*) App., p. 49, evidence of Mr. Boyd Kinnear. (*b*) App., p. 83.

entirely successful. Several well-informed witnesses from Scotland (Mr. William Chambers (*a*), the Right Rev. Dr. Murdoch (*b*), Mr. Anderson (*c*), Mr. Muirhead (*d*), Mr. Seton (*e*), and the Right Rev. Dr. Strahan,) (*f*) have given evidence before us in favour of a complete alteration of the law of irregular marriage.

Among those whose opinion upon the general question appears to be different, some who speak with the greatest authority are advocates of important, though of less thorough, changes in that law. Thus, Mr. Moncreiff (*g*) thinks it might be right "to "abolish the law of promise, *subsequente copulâ;* to restrict proof of consent *de* "*præsenti*, when the marriage is not registered, and the parties have not cohabited "together openly, to a period of three years from the date of the alleged consent; and "to refuse to either of the spouses their legal rights as regards the property of the other, "*inter se*, unless the marriage should be registered."

Mr. Fraser (*h*) would not abolish, but would so far modify the law of promise *cum copulâ*, that it should no longer be sufficient to annul a subsequent public marriage of one of the parties with a third person,who had no knowledge of the precontract. Mr. Macpherson (*i*) says:—"As to marriage by exchange of consent *per verba de præsenti*, "I must say that I consider it by far the least valuable and the least important of our "irregular marriages, or rather modes of proving marriage; and I think so because I see "by far the greatest number of litigations have arisen out of marriages of this kind. It "is the most dangerous of all kinds of exchange of consent because it alone affords no "time for reflection—everything is perilled on the words used with matrimonial intent. "There is no *locus pœnitentiæ*, even though no *copula* have followed. I think the "reasons of policy for supporting such marriages weaker than those which apply to the "case of a woman yielding her person for the first time, on the faith of a promise of "marriage. Moreover, when I look at the kind of cases that are reported, I see that the "*verba de præsenti* are very often introduced after a course of illicit intercourse. I by "no means wish to discourage the conversion of irregular relations into marriage, "but I wish it done deliberately, and I would give an opportunity of pausing after the "exchange of consent *per verba de præsenti*. My feeling is, that unless when cohabi-"tation or *copula* have followed, this kind of marriage might be done away with without "serious injury." Mr. Boyd Kinnear thinks, that the manner in which the method of establishing a marriage by evidence of reputation operates in Scotland may not unreasonably be objected to; and he suggests (*j*) that "the abolition of this method would remove "a considerable source of any perplexity which arises in the administration of the general "marriage law in Scotland, without affecting the leading principle on which it rests." Mr. Maclaren (*k*) admits it to be "a very hard case to go back after a long lapse of time, "to try to rear up a marriage;" and suggests, that the commencement of proof (other than documentary) when a marriage is sought to be made out by circumstantial evidence, should not be allowed to be carried further back than seven years (or some other fixed and moderate period of time) before action brought.

On the other hand, it is necessary to state, that opinions, generally favourable to the existing state of the marriage law of Scotland, have been communicated to us from quarters entitled to the highest respect; among them, committees appointed by the General Assemblies of the Established Church (*l*), the Free Church (*m*), and the United Presbyterians (*n*), and eminent ministers of those churches, such as Principal Barclay (*o*) and Dr. Cook. (*p*) We are far from undervaluing the importance of these opinions, or the authority of those from whom they proceed. The clergy of these churches represent, in matters connected with religion, the sentiments of the great majority of the people of Scotland; they practically administer the system of regular marriage, and their testimony, as to the working of that system, is entitled to implicit credit. But we trust it is consistent with the respect due to these opinions to say, that they seem to us to be chiefly founded upon experience of the beneficial and satisfactory operation (since the change made in 1834) of the system of regular marriage; and that we cannot attribute to them decisive weight upon the very different question, whether the specific effects of the present law of irregular marriage are salutary, or otherwise. The Committee of the United Presbyterians state, (and we have no reason to suppose the

(*a*) App., p. 39. (*b*) App., p. 12. (*c*) App., pp. 74, 75, 82. (*d*) App., p. 113.
(*e*) App., p. 90. (*f*) App., p. 171. (*g*) App., p. 70. (*h*) App., p. 142.
(*i*) App., p. 123. (*j*) App., p. 50. (*k*) App., p. 158. (*l*) App., p. 39.
(*m*) App., p. 43. (*n*) App., p. 46. (*o*) App., p. 132. (*p*) App., p. 144.

experience of the other churches to be different,) that "regular marriages are so "universally required by the discipline of the Presbyterian Churches, and by public "opinion, that the instances are extremely rare, and in the experience of hundreds "of ministers of these churches unknown, in which any others take place among their "members" (*a*).

Great stress is laid by several eminent witnesses upon the absolute safety of regular marriages under the present system. Thus, in answer to questions (*b*) by the Lord Justice Clerk (now Lord Justice General), Mr. Macpherson said, that he attached importance to the principle of the marriage law of Scotland "*mainly because it gave such great* "*security to regular marriages*," and made a marriage *in facie ecclesiæ* "unchallengeable "on any ground whatever;" and because, no forms being essential to the constitution of the marriage tie, "any defect in the formalities which usually attend a regular marriage "would have no fatal effect; so that if a man and woman, with the intention of "marriage, went before a clergyman, and the ceremony of marriage was performed in "the usual way, it was impossible that the marriage should fail, unless they were in the "prohibited degrees of relationship, or one of them was previously married." Sir George Clerk and Mr. Fraser answered similar questions (*c*) in a precisely similar manner.

These considerations would be entitled to the greatest weight, if it were now proposed to make the constitution of marriage in Scotland dependent upon the observance of any intricate or cumbrous forms, or even if the alternative lay between retaining the law of Scotland as it is, and introducing into that country the present marriage law of England or Ireland. But they furnish no argument against any proposition of change, of which the object is to put an end to secret consensual marriages, and to the doctrine of promise *subsequente copulâ*, by means consistent with the undiminished security of marriages solemnized *in facie ecclesiæ*, even though their celebration may have been in some respects informal.

It remains for us now to notice certain other arguments, both theoretical and practical, which have been advanced before us in support of the view, that the present law of irregular marriage in Scotland is right in principle, and operates, on the whole, for the advantage of the community.

The theoretical argument may be thus stated:—That, mutual consent being the essence of the contract, the fact of such consent, when established by any competent mode of proof, ought to be held sufficient, without more, to constitute marriage.

If it be true (as those who use this argument admit), that marriage is essentially a civil contract, it seems impossible to deny the abstract justice of the opinion expressed by Mr. Seton (*d*), that "Society is entitled to insist that persons who are about to marry "should celebrate the most important engagement in an open and unequivocal manner, "after due compliance with certain simple and uniform preliminaries. The law makes "clear and full provision for contracts affecting the sale of houses and lands, horses "and dogs, and goods and chattels of every description; and why marriage, the most "important of all human contracts, should not be as anxiously defined and provided "for, and thus placed beyond the reach of both fraud and doubt, appears to be one "of the greatest anomalies in the law of a Christian country."

It seems not out of place here to notice specifically what the civil effects of marriage in this country (or some of them) are.

Marriage exposes the husband or the wife who may attempt to enter into another similar contract before the first is legally dissolved, to criminal prosecution and punishment: and it invalidates, for all civil purposes, even as against an innocent partner, and innocent issue, any such subsequent contract. Marriage gives to the husband or wife, if aggrieved by any act of conjugal infidelity, certain legal remedies in the civil courts. Marriage gives the husband a right (when not proved to have forfeited it by some breach of his marital duty), to compel the wife to reside with him by legal process. Marriage vests the wife's personal property, and the right to receive and expend the income of her real property (except where otherwise provided by any trust or settlement), in the husband. Marriage makes the husband legally liable for the debts and contracts, before

(*a*) App., p. 47. (*b*) App., p. 126, Questions 825—828.
(*c*) App., pp. 131, 143, Questions 904, 905—1063—1067. (*d*) App., p. 90.

marriage, of the wife. Marriage disables the wife from binding herself during its continuance by any personal contract, and from conveying her property, or making a will, except in a particular manner, or under some special authority. Marriage communicates to the wife the legal domicil, and the settlement, for poor-law purposes, of the husband. Marriage protects the wife, in some cases, from liability to arrest or imprisonment: in others, it exempts her from criminal responsibility for acts, imputed by the law to the control of her husband: in others, it makes her, as against her husband, an incompetent witness. When either party dies, the law gives to the survivor (unless excluded by previous contract), various interests, curtesy, dower, freebench, thirds, terce, *jus relictæ*, &c. in the property of the deceased, merely as the consequence of marriage. If there are children, the father's legal liability to maintain them, his power of government and control over them while living, and his right to appoint their guardians after his death, depend upon the marriage of their parents. So do the rights of the children to succeed, whether by devolution of law or by reason of family or other entails, wills, or settlements, to the property, or shares in the property of parents, ancestors, or others, under the laws of inheritance, distribution, or legitim, or under any general destination to "next of kin," "children," "issue," "relatives," or "descendants." So do the rights of citizenship, and the corresponding duties of allegiance, of the children of British parents, born out of British territory; so does the succession to peerages, with seats, or eligibility to seats, in the hereditary branch of the Legislature.

We may add, that the present state of the Scottish law is itself inconsistent with the assumption that mere consent, however proved, ought always to be held sufficient. It has been seen that a promise of marriage, *subsequente copulâ*, sufficient by the law of Scotland either to constitute marriage, or to be the foundation of a declarator of marriage, is not permitted to be established by every mode of proof which would be competent for the purpose of establishing any ordinary contract, but only by writing or oath of reference. Nor do the Scottish Courts allow marriage *per verba de præsenti* to be proved by the testimony of the parties themselves; though they may, in some cases, be the only persons really acquainted with the facts. "The Scotch" (says Dr. Ball) (*a*) "are too wise a people to allow such a mode of proof." Yet the same parties, if they should happen to remove their residence from Scotland to England or Ireland, would there be permitted to prove themselves married by that very kind of evidence from the benefit of which they are excluded in Scotland. If, therefore, the law were to prescribe some definite mode of authenticating matrimonial contracts as a *sine quâ non* to their legal recognition, this would not be to introduce a principle at present unknown to the law of Scotland.

The practical arguments are these:—That a comparison, if fairly made, between the morality of England and that of Scotland, is not unfavourable to Scotland. That actions for seduction, prosecutions for bigamy, and divorces for adultery are more frequent in proportion to the population in England; that avowed concubinage is almost unknown in Scotland; that the matrimonial reputation, often allowed to grow up as a cloak for connexions originally illicit, has a tendency to induce regular marriage; and that the system of irregular marriage operates, on the whole, as a protection to the weakness, if not to the virtue, of the female sex.

We have endeavoured to bring these arguments to the test of facts; and we find, in the first place, that the number of registered marriages in Scotland is not greater, in proportion to the population, than in England; and that the number of births registered as illegitimate in Scotland is certainly not less than in England, and in some Scotch counties (*b*) exceeds the maximum rate even of the least moral districts in England. It is suggested that the Scotch registers may, in this respect, be better kept than the English; and that of the children registered in Scotland as illegitimately born, many may afterwards be legitimated by the marriage of their parents. Neither suggestion, however, has been supported before us by evidence; and, if the latter supposition were well-founded, it would be susceptible of proof, as the Scottish Registration Act makes provision for registering the legitimation, by subsequent marriage of their parents, of children illegitimately born.

(*a*) App., p. 188.

(*b*) In two or three northern counties, Mr. Fraser states the proportion to be as high as 16 per cent. App., p. 143.

In the next place, some of the witnesses examined before us state, as the result of their observation, that the effect of the peculiar state of law in Scotland is to obscure, if not to obliterate, the distinction between concubinage and marriage, and so to lower the general moral tone, on the subject of incontinence, of the poorer classes. Dr. Murdoch (Vicar Apostolic of the Roman Catholic Church for the Western District of Scotland), says (*a*) :—"As to the various modes in which irregular marriages are legally con-"tracted in this country, I have only to say that, by the Roman Catholic Church at "least, they are strongly condemned, as productive of great moral evils, and especially "of frequent separations of man and wife, but too often followed by second adulterous "unions. The portion of the ill-instructed and ignorant Roman Catholics, incapable "of distinguishing between the illicitness and the invalidity of irregular marriages, "can scarcely be convinced that such marriages are real and binding; and hence "instances of bigamy occur."

Mr. Seton (*b*) thinks, that the Scottish law is unfavourable to morality, and productive of illegitimacy, "as from the circumstance of a woman generally trusting to a sub-"sequent marriage, she frequently surrenders her virtue where otherwise she would not "do so." Dr. Strahan (*c*) thinks, that "the notion of sin, as connected with concubin-"age, is almost obliterated. .... The general feeling" (he adds) "amongst the "working classes is, that if they are afterwards married there has been no sin; there "is no scandal, no shame, no disgrace, and, consequently, they feel that there has "been no sin; that it has been made all right by the subsequent marriage." Mr. Mac-pherson (*d*) believes, "not merely from current rumour, but from information received "from clergymen of various denominations, that in the majority of cases, among the "working classes, in the more populous rural districts, when parties appear before the "clergyman to be married, the woman either is already a mother or is in the family "way." Dr. Strahan, having had his attention particularly drawn to this subject, in the course of a large medical practice, found the proportion of women in the working classes who were in this situation when married to be not less than nine out of ten; and he describes the following method of courtship as "universally prevalent" amongst Scotch agricultural labourers: "They go to the neighbouring farm-house after all the family "are in bed; they knock at the window, the girl comes to the window, and, if she "knows the young man, or, after a little parley, if she does not know him, she either "comes out and goes with him to an out-house or he comes into her bedroom." This system (he says) goes on all through the year: "very commonly the young man visits "the young woman once a week;" and the parents of the young woman allow all this; "they have done it themselves before, and there is no objection to it" (*e*).

With respect to the rarity of avowed concubinage in Scotland, this may perhaps only mean, that the facility of passing off concubinage as marriage, when it is convenient to do so, induces, in those who form the more permanent kind of illicit connexions, a habit of compromising with social opinion, and not calling concubinage by its proper name. That concubinage (whether called by that name or not) is, in fact, not very unfrequent in the populous cities and towns of Scotland, is implied in the concurrent statements of the Corporation of Edinburgh (*f*), the Parochial Board of Leith (*g*), The Right Rev. Dr. Murdoch (*h*), and Dr. Stark (*i*), all of whom say that the high fees charged for the proclamation of banns have the effect of inducing or encouraging, among other evils, "con-"cubinage." Mr. Maclaren (speaking upon the same subject), considers (*j*) that charge to be "*a great temptation to a kind of concubinage, which is called marriage, and* "*perhaps is intended to be marriage.*" And he suggests amendments of the law, which "would strike rapidly at the root of the system which prevails among the poorer classes "in Glasgow and Edinburgh and other large towns, of living together as married persons, "without being regularly married." Even if such persons, by the aid of the doctrine of habit and repute, might sometimes be held to be married, the moral estimate of their mode of living is evidently different from that which belongs to the condition of honourable and undisputed wedlock. Nor would it be safe to conclude that the habit and repute, in such cases, is generally or even often such as would be legally sufficient to prove marriage. Dr. Strahan (*k*) informs us, that when poor persons who have been living

(*a*) App., p. 12. (*b*) App., p. 91, Question 309. (*c*) App., p. 174, Question 1503.
(*d*) App., p. 122, Question 777. (*e*) App., p. 172, Questions 1465–1470.
(*f*) App., p. 46. (*g*) App., p. 46. (*h*) App., p. 12.
(*i*) App., p. 5. (*j*) App., p. 157. (*k*) App., p. 173.

together in this manner become chargeable to the parish (the woman's parish if they are unmarried, and the man's parish if they are married, being liable to maintain their children), their status is not recognized as that of marriage without a decree of declarator. And we learn from Mr. Anderson (*a*) that "the instances are extremely rare in which "marriage has been established on this ground (*i.e.*, habit and repute) *alone*." He added that he "did not think that half a dozen such cases could be pointed out in the "records of the Court of Session and the Consistorial Court from the earliest times. "The evidence has generally broken down, by reason of the repute being divided."

As to the supposed tendency of the law of irregular marriage to induce persons who have formed equivocal connexions in Scotland to be regularly married, it is to be observed, that, whenever this actually happens, the inference is, not that the parties previously considered themselves married, but the reverse. If they were really believed to be already married, (though irregularly), it would not be regular to marry them again *in facie ecclesiæ*, nor (as would be necessary for that purpose) to proclaim their banns as those of single persons. We cannot doubt the correctness of Dr. Cook's statement (*b*), that such a practice is not common in Scotland. Only one instance of it had occurred during his experience; and, in that case, the parties had come from the English side of the border, and the regular solemnization was resorted to to satisfy the scruples of parents living in England. Principal Barclay, a clergyman of 38 years' experience, while expressing his belief (*c*), that, "where irregular marriages have been contracted by any of "those in the middle or upper classes, they go on to complete them before a clergy-"man, in order to affect their social standing," was unable to call to mind so much as a single example of that kind, as having come under his *own* personal observation. We cannot but agree with Mr. Anderson (*d*), Mr. Seton (*e*), and Dr. Strahan (*f*), in thinking it unlikely that persons, who have intentionally acquired the repute of matrimony, and who desire to preserve it, in a country where the mere interchange of consent is *ipsum matrimonium*, would afterwards "go through a ceremony, which would practically be a publication "to the world that they had hitherto been living in concubinage." If the state of the law which we are considering facilitates concubinage, by giving it, in some cases, a false semblance of respectability, it is no adequate compensation for that evil, that some, or even a considerable number, of those connexions may terminate in regular marriage. The same thing happens in other countries, where a different law prevails, from the influence of motives universally felt and easily understood; and it must be especially liable to happen in Scotland, as long as children are legitimated by the subsequent marriage of their parents; a state of law which we assume will continue, and into which we do not consider it to be within our province to inquire. We are unable to see any reason why persons in these circumstances, who now make that acknowledgment of the previously disreputable character of their connexion, which is implied in the solemnization of a regular marriage, should not, from precisely the same motives, marry in any form which might be reasonably required by law, if the law and practice of marriage by private consent were entirely abolished.

Upon the protection which the law of irregular marriage, and especially of promise *subsequente copulâ*, is supposed to throw around females in Scotland, we are led, by the general result of the evidence before us, to place no very high value. It is hardly possible, that the technical and arbitrary rule as to the necessity of proving the previous promise by writing or oath of reference should be generally or popularly understood. Even so well informed a person as Dr. Bryce (a leading minister among the Irish United Presbyterians, maintaining intimate relations with the Scottish churches of the same denomination,) was, when examined before us, under the impression, that a merely verbal promise, made before witnesses, or otherwise satisfactorily proved, would be sufficient; and, when informed of the rule to the contrary, he admitted (*g*) that it might be a source of great danger. "The necessity" (he said) "of having the promise in writing "makes the matter worse, as a girl would be apt to overlook that circumstance. "Theoretically that appears to me a very strong objection, and always has, even "though I was under the impression till just now that a verbal promise, if fully proved, "was, *subsequente copulâ*, a marriage. A girl has heard that a promise of marriage "is as good in law as marriage; a man gives her such a promise, and presses for the "immediate possession of her person. Even if a verbal promise *were* sufficient, she would "run great risk in yielding, from the difficulty of proof, but this difficulty and risk she "cannot appreciate; she has a strong and generous affection for her lover, and unbounded

(*a*) App., p. 82. (*b*) App., p. 145. (*c*) App., p. 134. (*d*) App., p. 73.
(*e*) App., p. 90. (*f*) App., p. 171. (*g*) App., p. 180.

" confidence in him; in a moment of strong mental emotion, and perhaps of physical " excitement, she gives way; but since the promise must be in writing, and since not one " girl in 10,000 is likely to be aware of that, it is most natural to conclude, *à priori*, " that the law is more of a snare than a protection. At the same time there are " theoretical objections on the other side; and when I see that the opinion of those " who are practically conversant with the working of the law—lawyers and clergymen " who have resided long in Scotland—is for the most part very strongly on the other " side, I am afraid to condemn the existing law merely on *à priori* considerations."

The committee of the Free Church of Scotland state their opinion (*a*), that, " instead of " leaving a woman to dishonour and ruin, who has yielded on the faith of a solemn " promise of marriage, and enabling her seducer to escape, the law protects the weaker " party, and gives her the rights of a lawful wife, and her children the status of lawful " children." But such a broad statement appears entirely to lose sight of the limited nature of the proof which, in such cases, the law allows. The answer of Sir George Clerk to question 879 (*b*) upon the same subject is open to the same observation. Mr. Fraser (*c*) and Principal Barclay (*d*) appear to admit that, in some cases, a woman is liable to be misled by the state of the law on this point; and the latter witness (*e*) states, from his own experience, as a moderator of a kirk session, that, " in nine cases (of illegitimacy) " out of ten, when the parties are examined, the woman declares that it was on the faith " of marriage that she was deceived."

Dr. Strahan (*f*) " believes it to be very common for women to allow themselves to be " seduced in the hope of being married;" and that the promises of marriage, though kept in a considerable proportion of cases (generally by young men of respectable character, whose employment is not transitory), and, when kept, followed by *regular* marriage, are by no means generally fulfilled: " I think" (he says) (*g*) " perhaps there are " two-thirds in which marriage does follow, and one-third in which it does not, so far " as my experience goes."

We cannot perceive that this is a better state of things, as far as the interests of women, and of morality are concerned, than that which generally prevails in England; and, assuming it to be the fact (*h*), that legal proceedings, founded on seduction, bigamy, and conjugal infidelity, are comparatively less frequent in Scotland than in England, we are by no means satisfied, that this is, in any degree, due to the law of irregular marriage. It is not, however, necessary to prosecute any exact inquiry into the comparative state of morals in the two countries; in both, doubtless, there are many and serious evils, not due to their marriage laws, and which no amendment of those laws will cure. But in Ireland, where the law of irregular marriage is unknown, the marriage tie is held in at least as much reverence as in any part of Great Britain; and most of the particular evils, described in the evidence from Scotland to which we have referred, are (to say the least) of much rarer occurrence in Ireland.

Upon the whole, both the theoretical and the practical arguments have failed to shake our conclusion, that the law of secret consensual marriage, and of marriage by promise *subsequente copulâ*, as it now exists in Scotland, ought not to continue.

SOLEMNIZATION OF MARRIAGE.

The Contract of Marriage should be passed before an authorized Minister of Religion or Civil Officer.

We recommend that the interchange or declaration of matrimonial consent necessary to constitute a legal marriage should for the future take place, in all parts of the United Kingdom, in the presence of a duly authorized official celebrant or witness; and that no other mode of constituting marriage should be recognized by law.

On the continent of Europe, wherever the Code Civil is in force, a complete separation is made, in marriage, between the civil contract and the religious ceremony; and a contract passed before a purely civil officer is in all cases required. We do not recommend the introduction of this system into the United Kingdom. That it might in some respects have advantages, we do not deny; but it would be opposed to the habits and

(*a*) App., p. 43. (*b*) App., p. 129. (*c*) App., p. 143, Questions 1055, 1056.
(*d*) App., p. 133, Question 926. (*e*) App., p. 135, Question 986. (*f*) App., p. 172.
(*g*) App., p. 173. (*h*) App., pp. 118, 127.

feelings of the great majority of the people of Great Britain and Ireland, of all religious persuasions, and it would be inconsistent with the principle (to which we attach great value) of strengthening and consecrating the civil tie, as far as possible, by the sanctions of religion.

The objects for which civil legislation ought to provide may be equally well attained when the contract is entered into with the forms of religious solemnization, as when these forms are absent, provided the contract itself is in both cases properly guarded and authenticated. Nor is there, in the abstract, any reason why a purely civil officer should be a more trustworthy celebrant or witness of marriage for civil purposes, than a minister of religion, authorized for that purpose by law. Without imposing upon the clergy of any denomination either the name or the character of State functionaries, the State may obtain from them the same substantial guarantees as if they were its own functionaries, by conceding to them the privilege (which for the best reasons they must always desire) of solemnizing marriages entitled to legal recognition, upon such conditions as for the general welfare it may be deemed necessary to impose. Such a system will have the manifest advantage of building throughout upon the foundations of the existing law, which in every part of the United Kingdom recognizes as valid the celebration of marriage by duly authorized ministers of religion, without making that mode of celebration anywhere indispensable.

We therefore recommend that the official celebrant or witness of marriage should henceforth in all parts of the United Kingdom be either an authorized minister of religion, or an authorized civil officer.

What Ministers of Religion should be authorized to solemnize Marriage.

To permit all ministers of religion to solemnize marriage would be to abandon all security for its due authentication, and for the observance of any safeguards against sudden, clandestine, or unlawful marriages. This (as to episcopally ordained ministers) was the actual state of the law in England before the passing of Lord Hardwicke's Act, when a regular trade in clandestine marriages was carried on by degraded clergymen, generally men of infamous character, the inmates of prisons, and indifferent to all social and ecclesiastical restraints. In Ireland, at a still later period, it was thought necessary to restrain similar practices by sanguinary penal enactments.

We consider it, therefore, requisite, that the authority to celebrate marriages should be limited to such ministers of religion as are in the active exercise of official duties in their several churches or denominations, and occupy positions which make them amenable to public responsibility, and to the censure and discipline of their own religious communities. But, within these limits, we think the power ought to be as general as possible. The positions occupied by the diocesan bishops and parochial and district clergy of the several Episcopal churches (Protestant and Roman Catholic, established and unestablished), by the parochial clergy of the Established Church of Scotland, and by the officiating ministers of all the different bodies and congregations of Nonconformists, are, upon the whole, adequate guarantees for the general observance of those precautions, and the discharge of those duties, upon which the State, in the matter of marriage, is entitled to insist. Such ministers, therefore, when duly certified and registered (or other ministers specially deputed by them, or officiating with their consent), may safely be entrusted with the solemnization of marriage. We need hardly add, that the contract, if entered into by the parties, acting in good faith, in the presence of any person officiating *de facto* as a minister of the authorized class, ought to be held valid and binding in law, notwithstanding any defect in the orders, title, or authority of the person so officiating.

All churches and chapels (other than parish churches) of the United Church of England and Ireland, and of the Established Church of Scotland, and all churches, chapels, and meeting houses of the Roman Catholic Church, and of all Protestant denominations, for the ministers of which it may be desired to obtain power to solemnize marriages, ought, in our opinion, to be certified by proper authority to the Registrar-General, and to be registered by him, in accordance (substantially) with the provisions, on that subject, of the present laws of England and Ireland. The rules as to certifying for this purpose churches and places of worship ought everywhere to be the same, and they should (we think) be the following:—Episcopal churches and chapels of congregations (whether of the United Church of England and Ireland or not), organized

under bishops, should be registered upon the certificates of their respective bishops. Presbyterian churches or chapels of congregations (whether of the Established Church of Scotland or not), organized under presbyteries, should be registered upon the certificates of their respective presbyteries; and all other Nonconformist places of worship (including those of Episcopalian congregations not under bishops, and of Presbyterian congregations not under presbyteries), should be registered upon the certificate (in each case) of the officiating minister for the time being, and not less than ten householders, members of the congregation who have frequented the place in question, as their ordinary place of worship, for the period of one year next before the date of the certificate. The present provisions of the laws of England and Ireland, as to a change of the place of worship of the same congregation, after registration, should also be retained, and made general.

These rules, so far as they might vary from the existing laws of England and Ireland on the same subject, would have the effect of obviating certain minor inconveniences, which have been pointed out to us by the English Roman Catholic bishops, and by some Presbyterian witnesses from Ireland, as arising in their respective churches under particular local circumstances. The *minimum* number of certifying householders, in cases where the certificate of householders would still be necessary, is proposed to be taken from the Irish rather than the English law, upon the principle of giving the greatest degree of facility consistent with safety.

Times and Places of Solemnization.

We do not think it expedient to continue the requirement of solemnization within any certain hours, or at any particular church or other place, as in any case indispensable for the legal constitution of marriage. To do so would make it necessary either to establish different rules for different parts of the United Kingdom, or to do violence to the settled habits and customs of many of Your Majesty's subjects, in Scotland and Ireland, on a point as to which no mischief has been found to result from those habits and customs. In England the legal hours are uniformly from 8 to 12 A.M.; in the Established Church of Ireland they are the same; but any other Protestant marriages in Ireland may take place between 8 A.M. and 2 P.M., and Roman Catholic marriages are subject to no restriction of either place or time. Some instances have been brought under our notice of inconveniences which are said occasionally to arise from these requirements; and there appears to be no ground for believing, that mischief of any kind has resulted from their absence in Scottish regular marriages, Roman Catholic marriages in Ireland, marriages of Quakers and Jews throughout the United Kingdom, or marriages by special licence in England and Ireland. We do not suggest, that any clergyman of the Established or any other Church, solemnizing marriage, should be relieved by law from such obligations as may be imposed upon him, with respect either to place or time, by the law and discipline of his own church; but only that these points should, for the future, be remitted to that law and discipline, and should be left open and free, so far as State legislation is concerned. In every case, if our recommendations should be adopted, the celebrant must be either the ordinary or the officiating minister of some parochial or other registered church, chapel or place of worship (or a minister specially deputed by him, or officiating with his consent); and we think the State may well accept the official presence of such a minister as sufficient to authenticate the contract of marriage, although it may not be entered into during canonical hours, or in the church or place of worship in which such minister usually officiates.

Official Witnesses of the Marriages of Quakers and Jews.

The registering officers of Quakers, and the secretaries of Jewish synagogues, although not celebrating marriages as ministers of religion, fulfil, according to the usages of those persuasions, functions practically equivalent; and marriages, solemnized in their presence, should of course continue to be recognized by law throughout the United Kingdom.

It has not been suggested to us that any inconvenience results from the manner in which the registering officers of Quakers are at present certified to the Registrar General; and we therefore see no reason for suggesting any change in that particular. But it has been strongly represented to us, by Alderman Salomons (*a*), that the manner in which the secretaries of Jewish synagogues are now required by law to be certified is objectionable, as giving to the president of the London deputies of British Jews a virtual control over the liberty of marriage in all synagogues (other than those in connexion with the West

(*a*) App., pp. 11, 83.

London Synagogue), which he may deem not to be properly constituted, according to his own views of orthodox Jewish doctrine or discipline. The circumstances which led to the exception, by a special Act of Parliament, of the West London Synagogue, and other synagogues in connexion with it, from this control, and the exceedingly anomalous character of that legislation, would alone be sufficient to satisfy us of the soundness of this opinion: and we think it will be proper (as Alderman Salomons suggests) (*a*) to give to all synagogues of persons professing the Jewish religion in the United Kingdom (whether separatists from other Jewish synagogues, or not), the same means of obtaining State recognition for their secretaries, (as official witnesses of marriage), which are given to other congregations of Nonconformists desirous of having their places of worship registered for the solemnization of marriage. We should, therefore, propose, that the secretary of every registered Jewish synagogue should be entitled to act as registrar of marriages for that synagogue, upon the certificate of the warden or wardens, or of ten householders, declaring before a justice of the peace that they have been regular worshippers in such synagogue for not less than one year next preceding.

Presence of Witnesses.

We think that it will be expedient to retain and make universal the rule now generally prevailing in England and Ireland, that the solemnization of marriage shall take place in the presence of, and be attested, by two witnesses.

Forms of Solemnization.

Whatever may be the ceremonies or usages of any church or sect, or of Quakers or Jews, appropriate to the due solemnization of marriage, we are of opinion that the State ought not in any case to take notice of or enforce compliance with such ceremonies or usages, as necessary to the validity of any marriage, in other respects duly solemnized. Marriage ought, in all such cases, to be held well constituted by words of mutual consent to be husband and wife (or of mutual declaration that they are husband and wife), solemnly interchanged between the parties, in the presence of any authorized celebrant or official witness. On the other hand, we do not propose that any deviation should be required by law from the internal regulations, usages, or discipline of any church or religious body, with respect to the solemnization of marriage, or with respect to the obligation of ministers to solemnize marriage on compliance with the legal requisites.

Marriage before Civil Registrars.

The presence of a civil registrar is, in England, now required, on pain of nullity, at all marriages except those of the Established Church, and of Quakers and Jews; but it is not required either at regular marriages in Scotland, or at any marriages whatever (except those solemnized in the registrar's offices), in Ireland. When the duty of registrars *quoad hoc* is performed by the officiating ministers or other official witnesses of any religious denomination, (as is the case in all marriages by the United Church of England and Ireland, and by Jews and Quakers, and in all marriages by Presbyterian and other Protestant Nonconformist ministers in Ireland), the further security of the attendance of the civil registrar does not seem to be important, still less to be a condition upon which it can be necessary to make the validity of a marriage depend. We are confirmed in this view, by considering how very insignificant a proportion the number of marriages, to which this requirement is now applicable, bears to the whole number celebrated every year in the United Kingdom; and by the fact, that the Legislature, after some years' experience of a law requiring the presence of a civil registrar at all marriages by non-Presbyterian Protestant Nonconformists in Ireland, deliberately repealed it, and that no evil is shown to have resulted from that change. The English Roman Catholic bishops, after describing the incidence upon their own communion of certain difficulties, considered by them to arise out of this state of the English marriage law, have recommended (*b*), by anticipation, the course which we are prepared to advise; stating their opinion, that the most effectual remedy for most of these difficulties would be, "to constitute the Catholic clergy the legal witnesses of the marriages celebrated "by them, as is the case with the clergy of the Established Church, with the secretaries "of the Jewish synagogues, and with the clergy of the Catholic Church in Ireland." They add, that the form of words required to be repeated before the registrar, when he attends at their marriages, is essentially the same as that which has already been uttered in the religious rite; and that "this repetition to the registrar of what has been "already declared to the clergyman is apt to have a ludicrous effect, without any "comprehensible reason for it."

(*a*) App., pp. 11, 85. (*b*) App., p. 44.

We shall propose, in a later part of this Report, that similar duties with respect to registration to those now performed by the clergy of the United Church of England and Ireland, the officiating ministers at Presbyterian and other Protestant Nonconformist marriages in Ireland, and the official witnesses of the marriages of Quakers and Jews, should in all cases, and in all parts of the United Kingdom, be performed by the officiating minister or official witness of marriage, whoever he may be; and if this recommendation should be adopted, we think that the law should no longer insist upon the presence of a civil registrar at any marriage solemnized elsewhere than in his own office.

We are also of opinion, that the option of contracting a valid marriage without any religious ceremony should continue to be offered, in all parts of the United Kingdom, to all those who may desire to avail themselves of it; and that, for this purpose, a law corresponding (in substance) with the present laws of England and Ireland on that subject, and enabling a formal and regular marriage to be contracted by the solemn interchange or declaration of matrimonial consent between or by the parties, in the office and in the presence of a superintendent or district registrar, should be incorporated into and form part of the future marriage law of the United Kingdom. We use the expression "declaration," as well as "interchange," of matrimonial consent, because we think it is expedient to enable all persons in Scotland, who may hereafter enter into mutual engagements of that kind which, under the present Scotch law, might constitute irregular marriage, to acquire the complete status of legal marriage, not indeed with any retrospective effect (except that which the law of Scotland ascribes to all marriages in favour of children previously born), but by such a form of words, as to avoid giving occasion for unnecessary scruples: and also, because it is desirable that persons whom the law of Scotland might now hold to be actually, though irregularly, married, by reason of secret engagements entered into before the proposed change in the law, should have the means of placing their marriage beyond the reach of controversy, without using any form of words which might imply that it was previously invalid.

Marriages in Ambassadors' Chapels.

Major Graham (*a*), the Registrar General for England, has suggested to us, that doubts have been entertained, whether marriage may not now lawfully be celebrated in the chapel or house of a foreign ambassador accredited to Her Majesty, between a British subject and a subject of the foreign power represented by the ambassador, although, in such solemnization, the requisites of British law may not be observed.

It appears to us, that a marriage so solemnized could not be recognized as legally binding upon the British subject for civil purposes in this country. If our recommendations should be adopted, such a marriage would be legally binding, if solemnized by or in the presence of a minister of religion or official witness, duly authorized to solemnize marriages in the United Kingdom, but not otherwise. There could never be any difficulty in complying with these requisites; and we think it would be proper, that the law should except from its operation marriages in the chapels or houses of foreign ambassadors, only when both parties are subjects of the foreign country.

Mixed Marriages.

We are of opinion that no marriage, of which the celebration is in other respects valid, ought to be annulled or declared void on any ground connected with the religious profession, persuasion, or belief of both or either of the parties thereto at or before the time of the marriage. We therefore recommend, that the Irish Statutes, forbidding the celebration of marriages by Roman Catholic priests when either party is a Protestant, or has professed Protestantism within twelve months previously, should be repealed.

We have anxiously considered the question, whether it is desirable, without nullifying a marriage when actually celebrated, to make its celebration in all or any cases unlawful and penal, when solemnized by a clergyman of a religious persuasion to which both parties or one of them do or does not belong. There are, it seems to us, objections of the greatest weight to any legislation of this kind, in a code professing to be grounded on the principle of equality and impartiality, as between the members of different religious persuasions. The present marriage laws of England and Ireland wholly disregard that principle; which, on the other hand (except in respect of the monopoly of the publication of banns, still secured by law to the Established Church), is consistently maintained by the present marriage law of Scotland. The clergy of the United Church of England and

(*a*) App., p. 40.

Ireland may, in both those countries, lawfully marry any two persons of any religious persuasion whatever. A Roman Catholic clergyman may lawfully marry a Roman Catholic to a Protestant, or one Protestant to another, in England, but he cannot do so in Ireland; and, in Ireland, a Protestant Nonconformist minister may lawfully do what is prohibited to a Roman Catholic clergyman, viz., marry a Protestant to a Roman Catholic. In England, persons of any religion whatever may lawfully be married by any Nonconformist minister in any registered building, at their own option, without any inquiry whether either of them is, or is not, a member of the denomination to which the officiating minister belongs. Such a marriage would be in every sense lawful, though both parties were avowedly Roman Catholics, or members of the Established Church, or even Jews; but marriages cannot lawfully be contracted in England or Ireland according to the usages of Jews, unless both parties are Jews; nor of Quakers, unless both parties are members of, or "profess with," the Society of Friends. And, in Ireland, Presbyterian ministers cannot lawfully solemnize marriage except between parties one of whom is a Presbyterian, (though this fact cannot be inquired into afterwards for the purpose of vitiating any marriage actually celebrated); and other Nonconformist ministers are forbidden to celebrate marriage, except between parties of whom one at least belongs to the particular denomination of the celebrant.

We think, in accordance with opinions expressed to us by Sir Joseph Napier and other witnesses (*a*), that, if the same legal obligations for the purpose of guarding against clandestine and illegal marriages are imposed (as we propose that they should be imposed) upon equal terms on all ministers of religion, of every church and persuasion, who are authorized to solemnize marriages, the law ought not any further to interfere with the free choice of the parties themselves as to the place or manner of their marriage, and certainly should not attempt to enforce by secular prohibitions the spiritual discipline of any particular religious bodies. It is legitimate, and may be useful, for the purpose of those precautions which it is expedient to take against clandestine and illegal marriages, to institute preliminary inquiries into the religious profession of the parties, and into the places of worship usually frequented by them, and also to guard by all suitable means against the facilities for clandestinity, which would be offered if parties could be suddenly married without check or impediment by ministers of other religious persuasions, or even by strange ministers of their own. But when this is done, the leading principles for the State to bear in view seem to us to be these:—that the subject with which civil legislation is immediately concerned is the civil contract, and not the religious sanction; and that the office performed towards the State by the officiating minister is that of authenticating the civil contract; which, as it might in every case be competently entered into before a merely civil registrar, without any religious ceremony at all, ought to be regarded as not less competently entered into, whenever it is authenticated by any person who fulfils towards the State a function equivalent to that of the civil registrar, without reference to religious distinctions.

RECOMMENDATIONS.—REQUIREMENTS PRELIMINARY TO MARRIAGE.

We now come to the important and difficult subject of the preliminary requirements which the State should exact as securities against improvident, clandestine, and unlawful marriages.

Whatever these requirements ought to be, we think that no marriage, otherwise lawful, which has been actually solemnized in the presence of an authorized minister of religion or civil officer, should be annulled or declared void on the ground that any of such requirements have not been duly observed. Of all the conditions of lawful solemnization, now prescribed by law, none are more likely to be of practical value for the prevention of clandestinity, than those which relate to residence, to the consent of the parents or guardians of minors, and to the declarations required from parties about to be married. Yet if a minor is married in a parish or district where neither party has ever resided, without the necessary consent of parents or guardians, and upon a licence obtained by means of an affidavit in all respects false, the marriage is good, though the parties are liable to punishment. Assuming this to be sound legislation, it can hardly be right to annul a marriage actually solemnized by an authorized celebrant for any want of due publication of banns or licence; inasmuch as these requisites, so treated as indispensable, derive almost all the value which they possess from those which are

(*a*) App., pp. 107, 153, 161, 177, 184.

treated as not indispensable. Upon the balance of conflicting considerations, we think it is better to regard all these preliminaries as directory, and none of them as essential to the validity of marriage; relying mainly upon the sense of duty and responsibility of the authorized ministers of religion and civil officers, who are charged with the obligation of seeing that these preliminary requirements are fulfilled; and, in a secondary degree, upon the penalties, to which those ministers of religion and public officers, and the parties themselves, may justly be exposed for any wilful breach or neglect of such requirements.

In corroboration of these views we may refer to the experience of regular marriages in Scotland, and of Roman Catholic marriages in Ireland, neither of which can be invalidated on any grounds of this nature; yet neither system is found to operate, in this respect, prejudicially to the interests of society. By adhering to this principle, the security of these two modes of marriage will remain unimpaired, and the like security will be extended to all other marriages which may be celebrated before authorized ministers of religion or civil officers throughout the United Kingdom.

Considered, therefore, as directory only, the question arises, what the preliminary requirements of a general marriage law for the United Kingdom ought to be? We purpose, first, to examine this question, with respect to the substance of the requirements themselves; and, secondly, with respect to the persons who ought to be entrusted with the powers and duties necessary to secure their fulfilment.

Notice and Residence.

The period of residence to be required from each of the parties to be married in the parishes or districts where they respectively give notice of their intention to intermarry, before they can receive a certificate of compliance with the legal preliminaries, ought, we think, (ordinarily), to be 15 days after notice given, in cases where the party giving the notice is personally known to the minister or officer receiving it, and when both parties profess themselves to be of the same religious persuasion, and do not signify their wish to be married by a minister, or according to the usage, of any other persuasion. If these conditions are not all fulfilled, we think it should (ordinarily) be the duty of the minister or officer to withhold his certificate till after the expiration of 21 days from the date of the notice. At the end of the time limited, if all other legal requisites have been duly complied with, a certificate of compliance (which should, in all cases, state the date of the notice, and whether the party is personally known to the certifying minister or officer or not) should be given to each party; and it should not be lawful for any minister or civil officer to solemnize marriage without the production, by each party, of such certificate.

It has, however, been suggested to us, by witnesses from different parts of the United Kingdom, that power ought to be given to some proper authority to dispense, in proper cases, with the ordinary length of notice and period of residence.

Such a power is exercised at present, in cases of marriage by special licence, in the United Church of England and Ireland; it is also (much more extensively) used among the Irish Roman Catholics; and it is obvious, that cases may frequently occur in all classes of the community, in which good reasons (though not always such as it would be desirable to state upon the face of a certificate) may exist for accelerating the time of marriage.

If such a power is intrusted, not to all those who are authorized to give the ordinary certificate, but only to a superior authority, when such an authority is provided by the organization of the particular religious communion, and (in the absence of such a superior authority) to the superintendent or district registrar, and if its exercise is strictly limited to cases in which both the parties to be married are certified to be of the same religious profession by the officiating ministers, (or by the official witnesses, if they are Quakers or Jews,) of the places of worship, or synagogues, which they usually attend, we think it may safely, and even advantageously, be granted. We therefore propose, that a power of this nature should be given to the bishops of all Episcopal Churches (established or unestablished) organized under bishops; and to such officers as may be nominated for that purpose by the presbyteries of all Presbyterian congregations organized under presbyteries; and, in all other cases, to the superintendent or district registrar.

Declarations to be required.

The form of declaration, which by the statutes now in force is required to accompany a notice of marriage given to a district registrar in Ireland, extends to more particulars than any of the other forms in use as preliminary to marriage in the United Kingdom; and, as it appears to us that these particulars may reasonably be required, we think it is (so far) the best model for general adoption. By a declaration in this form the usual place of worship of the party, as well as the place where the marriage is intended to be solemnized, is shown. But, considering what are the main objects of these requirements, we think it might be proper (if not in all cases to require), at all events to authorize the minister or officer receiving the notice, to require, whenever he thinks fit, information upon the following points, which are not included in any of the existing forms, viz.:—

(*a.*) If either party is a widow or widower, when the former husband or wife died?

(*b.*) Whether either party is in any and what manner related to the other party, or to any former husband or wife of the other party?

(*c.*) When the residence of the party giving the notice in the parish or district where it is given first began; and, if within six months before the date of the notice, what was previously his (or her) usual place of residence?

(*d.*) If either party is a minor, alleging consent of a parent or guardian, what is the place of residence and address of such parent or guardian?

(*e.*) If both parties do not give notice to the same minister or officer, to whom, and at what place, the notice of the other party is given?

We think, also, that some advantage would arise from the general adoption of a provision, requiring the declaration of the party, to be supported by the testimony of two other credible persons, or of any justice of the peace, or officiating minister of religion, or other credible person well known to the minister or officer who receives the notice.

The experience of regular marriage in Scotland seems to prove that this would not be, in practice, too burdensome a requirement; and the adoption of a very similar rule for church marriages without banns in England has been advocated before us by the Bishop of Oxford (*a*), and has been recommended (in substance) by a committee of the Lower House of Convocation for the province of Canterbury (*b*).

Communication of Notices and Declarations.

All notices and declarations ought to be filed and preserved, in proper notice books, by the ministers or civil officers who receive them, and should be open to inspection, upon any reasonable application for that purpose, as is now the case with respect to notices given to a superintendent or district registrar in England and Ireland. We do not recommend any attempt to be made at any kind of general publication; we look upon the exhibition of notices, by hanging them up inside an office, as nugatory; and experience has shown that their exposure on church or chapel doors is rather offensive than useful. We are at the same time aware that a notice book of this sort gives no real publicity, and that the power of inspection is seldom likely to be used.

When both parties give notice in the same parish or district to a minister to whom they are personally known, and whose ministrations they are in the habit of attending, no further precaution is really necessary. When this is not the case, we think it may be of advantage to provide for the signature of the requisite notices and declarations (except when the notice is given to a civil registrar) in duplicate, and for the transmission of one duplicate within three days to the registrar of the district, whose duty it should be, in all such cases, to enter the duplicate notice in his own notice book (so that a search in the registrar's notice book by parents or guardians apprehending clandestine marriages of their children or wards may always be sufficient); and also to send notice by post (whether the notice is given to himself or to a minister by whom a duplicate is sent to him) to the minister of the church, chapel, or place of worship described by the applicant as that which each of the parties usually attends; (in the same way as is now provided by the Irish Marriage Acts with respect to notices given in Ireland to a district registrar), or, if there be none such, to the incumbent of the parish in which the party, not described as usually attending any place of worship,

(*a*) App., p. 71. (*b*) App., p. 169.

resides. It is to be observed, that the principle of this suggestion is at present more or less perfectly embodied in the Irish marriage laws with respect to all kinds of Protestant marriages, except those solemnized by banns or special licence.

Banns.

Without proposing that the publication of banns should be prohibited or interfered with in the Established Churches, when desired by the parties, or in other churches or religious denominations, when required by their particular discipline or usage, we recommend that such publication should not henceforth in any case be required by law as a condition either of the lawfulness or of the regularity of marriage.

In rural parishes and districts, generally, every useful purpose which can be answered by the publication of banns in the Established Church may be equally answered by the mere fact of notice to the officiating minister; and the evidence which we have received from England abundantly proves, that the dislike of this mode of publication tends to promote clandestinity, rather than to prevent it, by inducing many persons to resort for marriage to places where they are unknown. The same evidence also proves that it is practically useless and inconvenient in very populous places. In Scotland, being confined by law to the Established Church, and being performed three times over on a single Sunday just before the commencement of divine service, it can be of very little, if any, use, particularly in great cities and towns; and it is, not unreasonably, complained of by the Scottish Nonconformists, who are married by their own ministers, as being in their case vexatious as well as useless. In Ireland it is but little used, and we are satisfied that the time has now arrived when it may be abolished, as a statutory requirement, throughout the United Kingdom, without any public disadvantage.

Consent of Parents and Guardians.

We think that the present law of England and Ireland, which makes it unlawful for any minister of religion or civil registrar to solemnize the marriage of any minor, in opposition to the declared dissent of the father, if living, or of the mother or other lawful guardian (if any) when the father is dead, (subject to an appeal by the minor in any case of unreasonable refusal to the Courts having jurisdiction over infants and their guardians,) should be extended to all marriages throughout the United Kingdom; and that no notice of marriage should ordinarily be received from any minor, declared or known to be such, without a consent in writing, signed by the proper parent or guardian, if such there be. Provision, however, should be made for cases in which, through unavoidable circumstances, such consent cannot be obtained.

Caveats and Prohibitions.

In the event of any objection to the solemnization of a marriage, which (if true in fact) would render such solemnization illegal, being alleged by any person, either to the minister or civil officer receiving any notice, or to any minister or officer by or before whom the marriage is intended to be solemnized, it should be the duty of such minister or officer to decline to grant his certificate of compliance with the legal requisites, or to solemnize the marriage, unless the objection is met or removed to his satisfaction. But prompt and easily accessible means should be provided by law, for trying the validity of such objections in all contested cases. At present they may be tried by the superintendent or district registrar, with an appeal to the Registrar-General (in England and Ireland), when the marriage is to take place upon a registrar's certificate or licence, and by the licensing minister among Irish Presbyterians, with an appeal to the presbytery. But no definite provision is now made for the trial of such objections in other cases.

Licences and Certificates.

The subject of licences and certificates will be most conveniently dealt with in connexion with the question, who ought to be the persons entrusted with the powers and duties necessary to secure the due fulfilment of the directory provisions of the law.

To whom Notices of Marriage ought to be given.

We recommend, that, in all cases, in which a marriage is intended to be solemnized within the parish church or district in which either party lives, the requisite notice of marriage, accompanied by the necessary declarations, should be given by both or one of

the parties to the minister of religion or civil officer, by or before whom (or by whose deputy or substitute) the marriage is intended to be solemnized, being a minister or officer authorized by law to solemnize marriage within the parish, chapelry, or ecclesiastical district (if the marriage is to be according to the rites of the Established Church) or within the registrar's district (if the marriage is not according to the rites of the Established Church), in which the party or parties giving the notice is or are then residing. Under the term, "civil officer," we here include the registering officers of Quakers and the secretaries of Jews. By means of this provision, the whole proceedings, from the notice to the solemnization, will take place before the same authority; and the solemnization will not take place upon the mere authority of the civil registrar, except when the marriage is celebrated in his office. The certificate of the minister or civil officer receiving such notice should, for all purposes, be of the same force and effect throughout the United Kingdom as a legal authority for the solemnization of marriage by him, or by any other minister or officer whom he may specially depute for that purpose, or who may officiate with his consent, as a common licence now is for marriage by the Established Church, and a registrar's certificate or licence for other marriages, in England.

When the parties to be married do not both reside in the same parish, chapelry, or district, or when the marriage is not intended to be solemnized within a parish, chapelry, or district in which either of them resides, we recommend, that the notice of each party not residing in the parish, &c. or district, where the marriage is to be solemnized, should, generally, be given to the registrar of the district within which such party resides; and that a certificate of the compliance of such party with the legal requisites preliminary to marriage, under the hand of such registrar, should be necessary and sufficient to authorize the marriage in the parish, chapelry, or district, where it is proposed to be solemnized, provided the other party has complied with all the provisions of the law. The alternative may, however, be allowed, of giving this latter notice, when both parties are of the same religious persuasion, to an authorized minister of that persuasion officiating at any place of worship, in the parish, chapelry, or district, which the party giving the notice usually attends (or elsewhere, within limits similar to those prescribed for the place of solemnization by 3 & 4 Vict. cap. 72.); such minister (in that case) being authorized to grant the necessary certificate.

Time for which Certificate should be available.

The period after which a certificate, granted under these regulations, should cease to be available as an authority for the solemnization of marriage, ought (we think) to be that now fixed with respect to all banns, licences, and certificates by the law of England—viz., three months, to be computed from the date of the certificate.

Licences.

If these recommendations are adopted, the certificate will in all cases supersede the necessity for a licence, and we recommend that the practice of granting common licences in the United Church of England and Ireland, and Registrars' licences, and the powers of licensing ministers among the Presbyterians in Ireland, should cease.

Registration.

The present arrangements for the registration of marriages, in each part of the United Kingdom, seem to us to require only this alteration, that the minister or officer, who is the celebrant or official witness of marriage, should in all cases be charged with the duty of recording each marriage at the time of solemnization, in proper duplicate registers, one of which should remain in the official custody of the person for the time being filling the same office, and should be delivered up, upon each vacancy in that office, to the next successor, and the other should be transmitted quarterly by such minister or officer (free of postage) through the District Registrar to the Registrar General. Proper books and forms for this purpose should, we think, be supplied at the public expense, by the Registrar General in each part of the United Kingdom, to every person authorized by law to celebrate, or to be the official witness of, marriage; both the local and the general registers being admitted in all courts as *prima facie* legal evidence of marriage. The system which we thus recommend is for the most part already in force, except as to Scotch regular marriages, and Irish Roman Catholic marriages; and even as to the latter class of marriages, although the duty of making the proper return to the registry office is imposed upon the married parties (*i. e.*, upon the husband), and not upon the clergyman; we learn that it is now very often voluntarily discharged by the clergy.

Evidence.

We do not propose any alteration in the present law, so far as relates to the proof of marriage by secondary evidence, (when properly admissible,) in any part of the United Kingdom. In particular, we propose to leave it hereafter, as now, competent to prove marriage in all parts of the United Kingdom, by evidence of cohabitation and reputation of marriage, when the facts of the particular case may justify the inference, from such cohabitation and reputation, that the parties have been married in the manner required by law.

Fees, Stamps, and Expenses.

It would, in our opinion, be highly desirable that the exaction of fees and compulsory payments of every kind for the solemnization of marriage, or for the fulfilment of any preliminary conditions of marriage prescribed by the state, should be wholly abolished; that no stamp duty should be imposed upon any certificate, notice, or other document required by law for the purpose of marriage; and that postage should not be chargeable on any official documents passing through the post in compliance with the provisions of the law of marriage.

Any increase in the cost to the public of the system of general registry, arising out of the requirements of an improved marriage law, such as we recommend, would, in our opinion, be slight and inconsiderable when compared with the public benefit arising therefrom.

If, however, it is considered necessary still to charge fees for the solemnization or for any of the other legal requisites or incidents of marriage, (either on account of the difficulty of replacing the deficiency which their abolition might cause in the incomes of some of the parochial clergy, or for any other reason,) we think that a uniform table of such fees, upon as moderate a scale as practicable, should be settled by law; and that such fees should not, in any case, be augmented by the imposition of stamp duties, such as those now imposed, in England, on common licences.

Penalties.

We think that it should hereafter be made misdemeanor, and not felony, for any minister of religion, civil officer, or other person, wilfully to contravene the provisions of the marriage law; and that it is unnecessary to fix beforehand for such offences pecuniary penalties of any certain amount. All wilfully false and material statements, in any declaration required by or under the authority of the marriage law, should make the guilty parties liable to the penalties of perjury; and for this cause, as well as for marriage during minority, or with a minor, without the consent required by law, the proper Court should have power to make and enforce settlements of property, so as to prevent the guilty party from benefiting by the marriage.

Repeal of Acts.

If these recommendations are adopted, we further recommend that the enactments, necessary to give effect to them, should be embodied in a single statute; and that all the existing statutes of the United Kingdom, and of Scotland and Ireland, upon the subject of marriage, should be repealed. Care should, of course, be taken, not to revive, by such repeal, any canon, or other law on the subject of marriage, which has been expressly or virtually repealed by former legislation.

CONCLUDING REMARKS ON THE PRINCIPLES OF THE FOREGOING RECOMMENDATIONS.

We feel encouraged by the general spirit of much of the testimony with which we have been favoured, from persons whose opinions are entitled to the greatest weight, to believe that the foregoing recommendations will be found to approach more nearly than any other practicable scheme to a solution of the difficulties of this very important subject.

If we turn to Roman Catholic testimony, it will be found, that we give no more than a reasonable development to the principle laid down by the English Roman Catholic prelates (*a*), that it is desirable "to constitute the Catholic clergy the legal "witnesses of the marriages celebrated by them;" and to the declarations of Bishop Leahy (*b*), that the State "possesses an unquestionable right to require proof of the

(*a*) App., p. 44. (*b*) App., p. 2.

" marriages of its subjects, and to take care that they are properly registered;" and of Bishop Moriarty (*a*), that "the State has a right to see that the marriage is registered."

We derive equal encouragement from the views expressed by some of the most authoritative exponents of Protestant opinion in Ireland. The late Bishop of Derry (*b*), considered it "not only unobjectionable, but highly desirable that the ministers of religion "should as far as possible be the persons empowered by the state for this purpose;" adding:—

"As, however, it seems desirable that the liberty of parties about to marry should not "be needlessly interfered with, I should be inclined to extend this privilege to all "ministers, of whatever denomination, who may be willing to comply with the require- "ments of the state, as to times, places, &c. of performance, and likewise as to re- "gistration. These requirements should be, in my opinion, as far as possible *identical* "as regards the various religious bodies."

Dr. Bryce (of the Irish United Presbyterians) also said (*c*), "I would allow a Roman "Catholic clergyman to celebrate mixed marriages, just as I claim that I should be at "liberty to do the same thing; but I would insist upon his being subject to the same "rules with regard to time, place, notice, and registration, that all Protestant clergymen "of all denominations are subject to."

Sir Joseph Napier, Dr. Ball, and others, spoke exactly in the same sense (*d*).

In England, so far as marriages by the Clergy of the Established Church are concerned, the tendency of some of the most important suggestions, which we have received, has also been in the direction of changes which we recommend. The Bishop of Oxford (*e*) is favourable to making all the parochial clergy, in effect, Surrogates; and the committee of the Lower House of Convocation of the province of Canterbury (*f*) propose to allow all persons, who wish to avoid the publication of banns, to be married upon the certificate of their own parochial clergyman after 21 days' notice, upon terms almost identical with those which we have advised.

In Scotland, our recommendations are in harmony with the principles of all those who are attached to the present system of regular marriage, as practised in that country, and who would make the maintenance of that system, in its essential characters, the condition of any interference with the law of irregular marriage.

It is true that by some other witnesses (among whom we may mention the late Bishop of Rochester (*g*), the Dean of Chichester (*h*), Mr. Porter (*i*), Dr. Stark (*j*), and the Registrar-General for England (*k*),) views less favourable to the employment of a clerical agency, for the fulfilment of what may be described as the civil conditions of marriage, have been expressed. But we are strongly impressed with the conviction, that it is in the last degree important to interfere no further with the general sentiments and habits of the people, nor even (in any matter of substance), with the existing provisions of the law, than is absolutely necessary for the purpose of constructing a safe and consistent marriage code for the whole people of the United Kingdom; and, under the influence of this paramount consideration, we have deemed it right to forego some minor advantages, which might doubtless have been obtained by a nearer approach to the continental system. Should our recommendations, in their general substance, become law, the great object of uniformity will have been accomplished; the law will be simplified and consolidated; the highest practicable security for the facility, certainty, and safety of marriage will have been attained, without any infringement of religious liberty, or antagonism between the authority of the state and the influence of religion: and, at the same time, there will be no sensible interference with the previously accustomed course of regular marriage, as hitherto solemnized, in England, in Scotland, or in Ireland.

(*a*) App., p. 96. (*b*) App., p. 34. (*c*) App., p. 181. (*d*) App., p. 107, 185, 161.
(*e*) App., p. 70. (*f*) App., p. 169. (*g*) App., p. 14. (*h*) App., p. 12.
(*i*) App., p. 163. (*j*) App., p. 4. (*k*) App., p. 41.

D.—MARRIAGES OF EUROPEAN BRITISH SUBJECTS IN INDIA.

Prior to 1818 no attempt had been made to regulate the marriages of European British subjects in India by Statute, such marriages being held to be governed by the law of England as it existed antecedent to Lord Hardwicke's Act (26 Geo. 2. c. 33.); but doubts having been raised in 1816 whether certain marriages, which had been solemnized within the British territories in India by ordained ministers of the Church of Scotland, as by law established, were to all intents and purposes valid marriages, a declaratory Statute was passed in that year (58 Geo. 3. c. 84.) to quiet all doubts respecting such marriages, and it was thereby declared and enacted that all such marriages solemnized before 31st December 1818, should have the same force and effect as if solemnized by clergymen of the Church of England, according to the rites and ceremonies of that church. It was further declared and enacted that from and after the 31st December 1818 all marriages between persons, both or one of whom shall have signed a declaration in writing, that they, or he or she, as the case may be, hold communion with the Church of Scotland by law established, if solemnized by ordained ministers of that church appointed by the East India Company to officiate as chaplains within the said territories, shall have the same force and effect as if such marriages had been solemnized by clergymen of the Church of England, according to the rites and ceremonies of that church. The Statute, however, did not proceed to declare any such marriages to be invalid, if the preliminary declarations should have been omitted, and it left the law, in all cases where marriages should be solemnized otherwise than under its provisions, as it was before.

Numerous marriages, on the other hand, appear to have been contracted by European British subjects in India *per verba de præsenti* without the intervention of any minister in Holy Orders, inasmuch as for a century after the first establishment of the English in India there was no provision made for chaplains, and even then in the most modest proportions. The Indian Courts have always sustained the validity of such marriages, and notwithstanding the decision of the House of Lords in the Queen *v.* Millis in 1844, which declared the presence of a minister in Holy Orders to be essential to the validity of a marriage under the law of England, as it existed prior to Lord Hardwicke's Act, the Supreme Court of Bombay in 1849 held that a marriage, celebrated between two members of the Church of England at Surat by an Independent missionary not in Holy Orders was a valid marriage, which entitled the husband to recover damages for criminal conversation with his wife (*a*).

The decision, however, of the House of Lords in the Queen *v.* Millis could not fail to cause uneasiness in regard to certain marriages contracted between European British subjects in India; and the Royal Commissioners appointed to inquire into the state and operation of the law of marriage, in their second report presented to Her Majesty in 1850, recommended,—

1. That all marriages heretofore had within the territories under the Government of the East India Company between any persons whatever, whether by a minister of the Scotch Church not being a chaplain, or by any minister of any other persuasion, or by any layman, where the only objection is that they have not been solemnized by a priest, shall be good and valid.

2. That the marriage law of India shall, *mutatis mutandis*, be made conformable to the law now existing in England.

Accordingly in the year 1851 an Act for marriages in India (14 & 15 Vict. c. 40.) was passed, under the provisions of which, where one or both of the parties intending to be married is or are a person or persons professing the Christian religion, their marriage may be solemnized in India, India being declared to include all territories for the time being under the Government of the East India Company, and all territories of any native Princes or States in alliance with the said Company. The provisions of this Statute, as far as its enactments are concerned, are of an enabling character. It creates no statutory nullity. It declares that all marriages heretofore solemnized in India by persons not in Holy Orders, if not otherwise invalid, shall be deemed and held to be valid in law to all

(*a*) Maclean *v.* Clarstall, September 21, 1849, 7 Notes of Cases (App., p. XVII.)

intents and purposes. It provides that nothing in the Act shall invalidate or affect any marriage which may be solemnized in India by persons in Holy Orders, or any marriages which may be solemnized under the provisions of 58 Geo. 3. c. 84., or any other marriages which, under the laws for the time being in force in India, might have been there solemnized in case the Act had not been passed; and it empowers the Governor General to make laws for the Registration of all such marriages, with a view to the transmission of the evidence of such marriages, when desirable, to the Registrar-General of births, deaths, and marriages in England. On the other hand the enactments of the Act, as regards the constitution of the contract of marriage, are confined to providing that marriage Registrars shall be appointed for the purposes of the Act, and districts shall be assigned to such Registrars, and that after due notice has been given to the Registrar of the district, within which each party intending to be married dwells, and such Registrar has issued a certificate or certificates of such notice having been given, a marriage may be solemnized, according to such form and ceremony as the parties intending to be married may see fit to adopt, in the presence of some marriage Registrar, to whom the certificate or certificates shall be delivered, and of two or more witnesses; provided also that in some part of the ceremony each of the parties shall declare that he or she, as the case may be, knows of no lawful impediment to their marriage, and each of the parties shall call upon the persons there present to witness that they take other respectively for lawful husband and wife, or to the like effect.

The Act then goes on to provide for the due registration of all such marriages, and for the periodical transmission by the marriage Registrars of the certificates of such marriages, and of the register books themselves, when they have been filled, to the Secretary of the Indian Government.

Prior to the passing of the above Act a public register book of marriages had been kept in each of the Indian Presidencies, under the authority of the East India Company, and it was usual to transmit an authenticated copy of the entries in each register book from time to time to the Secretary of the East India Company in London, and such copy was by him deposited and kept amongst the archives of the Company. The entries of marriages in any of such copies, when produced by an officer of the Company, have always been admitted by the House of Lords and by the Courts at Westminster Hall in proof of the solemnization of such marriages. The provisions for the registration of marriages under 14 & 15 Vict. c. 40., have become applicable to marriages solemnized in India after January 1, 1852, and due regulations for this purpose have been made by Indian Acts in pursuance of the 20th and 21st sections of the Imperial Act.

The Imperial Act, so far as respects the authority to make appointments, laws, and regulations for carrying its provisions into effect, having come into force immediately after the passing of it, an Indian Act was forthwith passed by the Governor General of India in Council, intituled An Act for giving effect to the Provisions of an Act of Parliament passed in the 15th year of the reign of Her present Majesty, intituled An Act for Marriages in India. The object of this Indian Act (Act V. of 1852) was more particularly to give effect to the provisions of the Imperial Statute as regarded the solemnization of marriages in the presence of a marriage Registrar. Further legislation in India took place in 1860 and in 1864, but the law which governs at the present time the marriages of European British subjects in India is the Indian Marriage Act, 1865, which received the assent of the Governor General of India in Council on 23rd February 1865, and is intituled An Act to provide for the Solemnization of Marriages in India of Persons professing the Christian religion. According to its provisions marriage may be solemnized between European British subjects—

1. By any person, who has received episcopal ordination, provided it be solemnized according to the rules, rites, ceremonies, and customs of the church of which he is a minister.

2. By any clergyman of the Church of Scotland, provided it be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland.

3. By or in the presence of a marriage Registrar, under the provisions of the Statute 14 & 15 Vict. c. 40., or of Act V. of 1852 of the Governor General of India in Council.

4. By any minister of religion who, under the provisions of the Act, has obtained a licence to solemnize marriages. It is further provided that the declaration and

certificate required by 58 Geo. 3. c. 84., and Act XXIV. of 1860 (for the solemnization of marriages in India by ordained ministers of the Church of Scotland), shall be no longer required.

Two other important provisions of this Act deserve attention: one of them provides that all marriages solemnized in India before May 1, 1865, by persons who have not received episcopal ordination, or who have not otherwise received express authority to solemnize such marriages under Acts of Parliament, or Acts of the Governor General of India in Council, shall, if not otherwise invalid, be deemed valid to all intents and purposes. The other provides that from and after May 1, 1865, all marriages which may be solemnized in India between persons, both or one of whom shall profess the Christian religion, otherwise than in accordance with the provisions of the Act in regard to the persons by whom marriage may be solemnized, shall be null and void.

The terms of this last provision are certainly too absolute, inasmuch as the neglect or omission of any rule, rite, ceremony, or custom of the Church of which the celebrant is a minister, or of any provision of 14 & 15 Vict. c. 40., or of Act V. of 1852, in regard to marriage Registrars, or any disqualification of the celebrant, of which the parties to the marriage may be unwitting, would render a marriage null and void between parties, who may have acted in perfect good faith as respects their intention to contract marriage according to the provisions of the law.

We may further observe, that the Indian Act of 1865, in declaring all marriages solemnized in India otherwise than in accordance with its provisions, as above stated, to be null and void, is in evident conflict with the provisions of the Imperial Statute 4 Geo. 4. c. 91., under which it is enacted that all marriages solemnized within the British lines by any chaplain or officer, or other person officiating under the orders of the commanding officer of a British army serving abroad, shall be deemed and held to be as valid in law as if they had been solemnized within Her Majesty's dominions with a due observance of all forms required by law (*a*).

It is of the more importance that attention should be drawn to this inconvenient conflict of law, inasmuch as the Imperial Statute 28 & 29 Vict. c. 64., which provides that every law made by the legislature of any of Her Majesty's possessions for the purpose of establishing the validity of any marriage contracted in such possessions shall be effectual for such purpose within all parts of Her Majesty's dominions, whilst it thus gives effect throughout Her Majesty's dominions to the clauses of the Indian Act which render past marriages valid, does not give like effect to the clauses of that Bill which annul and avoid future marriages, and although under the provisions of 3 & 4 W. 4. c. 85. the Indian Act will have the same force and effect within and throughout the Indian territories as any Act of Parliament would and ought to have within those territories, it will not have the like force and effect within all parts of Her Majesty's dominions. It may thus happen that a marriage solemnized in India, within the lines of a British army, under the provisions of 4 Geo. 4. c. 91., although not valid according to the Indian Act, will be upheld in an Imperial or Colonial Court of Justice as being valid under an Imperial Statute, precisely as a marriage solemnized in a foreign country under the provisions of 13 & 14 Vict. c. lxviii. will be upheld in an Imperial or Colonial Court, although not valid according to the *lex loci*.

There is no direct provision made by 14 & 15 Vict. c. 40., or by the Indian Act, No. 5 of 1865, as to what are to be regarded as lawful impediments to the solemnization of marriage. But the 28 & 29 Vict. c. 64., which will give effect to the Indian Act, for the purpose of establishing retrospectively the validity of an Indian marriage within all parts of Her Majesty's dominions, provides that nothing in that Statute contained shall give effect or validity to any marriage unless, at the time of such marriage, both of the parties thereto were *according to the Law of England* competent to contract the same. The operation of this provision of the Imperial Statute may deserve consideration in its bearing upon the second marriage in India of an European British subject

(*a*) It appears from the documents published by the Royal Commissioners on the Law of Marriage, in their report of 1850, above referred to, that it was the opinion of the Bishop of Calcutta (p. 14) and of the Advocate General at Fort George (p. 37), that the Act of 4 Geo. 4. c. 91., applied to a British army serving in India, which seems also to have been the view of the East India Company itself, in the case submitted in their behalf to counsel in 1840, in respect of marriages solemnized in India between British subjects by persons not in holy orders, and not within the provisions of 58 Geo. 3. c. 84. or 4 Geo. 4. c. 91. (p. 8).

whose first marriage may have been dissolved by the sentence of a colonial court according to the provisions of a colonial law, such as that of the colony of South Australia, to which we shall refer more at length under the next following head of inquiry.

Due provision has been made by the Indian Act, No. 5 of 1865, for the registration of all marriages solemnized in accordance with its provisions, as well as for the transmission to the Secretary of State for India of the certificates of the marriages, of which the Governor General of India in Council may desire that evidence should be transmitted to England, for the purpose of being delivered to the Registrar-General of births, deaths, and marriages. We do not think it necessary to enter further into the details of this branch of the subject.

E.—MARRIAGE OF EUROPEAN BRITISH SUBJECTS IN THE COLONIES.

The most important Imperial Statute which bears upon the marriages of European British subjects in the colonies is 28 & 29 Vict. c. 64. (29 June 1865), under which every law made or to be made by the legislature of any of Her Majesty's possessions abroad for the purpose of establishing the validity of any marriage previously contracted in such possession shall have and be deemed to have had from the date of the making of such law, the same force and effect for the purpose aforesaid within all parts of Her Majesty's dominions, as such law may have had or may hereafter have within the possession for which the same was made: providing that nothing in this law contained shall give any effect or validity to any marriage, unless at the time of such marriage both of the parties thereto were, *according to the law of England*, competent to contract the same.

The passing of this Act was occasioned by the previous passing of various Acts by the legislature of divers of Her Majesty's possessions abroad, for the purpose of establishing the validity of certain marriages previously contracted therein. Thus the legislature of New South Wales in 1855 had passed an Act whereby every marriage (with certain exceptions), celebrated in that colony before the commencement of that Act by any minister of religion or person ordinarily officiating as such, was declared to be notwithstanding any irregularity of form a perfectly legal and valid marriage to all intents and purposes. Similar laws have been passed at various times by most of the Australian colonies, and it was in consequence of doubts having been suggested as to the provisions in such Colonial Acts for the confirmation of previous marriages being operative beyond the limits of each colony, that the Imperial Statute was passed, declaring explicitly that these retrospective enactments should have their intended effect throughout Her Majesty's dominions (*a*). But there is a provision in the Imperial Statute which may be operative in a manner not intended by the Imperial Legislature, in consequence of the provisions of the English Divorce and Matrimonial Causes Act having also been adopted *mutatis mutandis* by the local legislatures in divers of Her Majesty's possessions abroad. They have been adopted in South Australia in 1858, in Tasmania in 1860, in Victoria in 1865, in Queensland in 1866. The Colonial Acts have also followed the example of the Imperial Act in granting to the parties, whose marriage has been dissolved, liberty to marry again. But doubts may be raised whether such colonial acts, not having been confirmed by any Imperial Statute, would be operative beyond the limits of each colony, in which they may have been passed, yet the right of suing for dissolution of marriage in any of the colonial courts is not confined to parties domiciled in the colony, but a suit is permitted to be instituted by any husband and by any wife. Again, as the Divorce and Matrimonial Act of South Australia has been in operation since 1858, and a similar Act has been in force in Tasmania since 1860, parties who have been divorced in one or other of those colonies may have contracted a second marriage in another colony; for instance, in Queensland before the passing of the Marriage Act of the latter colony, on 12th September 1864, whereby every marriage celebrated in that colony before the commencement of that Act, by any minister of religion, or person ordinarily officiating as such, (notwithstanding any irregularity of form) is declared to be valid to all intents and purposes. But the operation of the Imperial Statute, as regards the second marriage of a divorced party, will be to limit the effect of this retrospective provision of the

(*a*) Despatch of Her Majesty's Secretary of State for the Colonies of 26 July 1865 to Governor Sir C. H. Darling, K.C.B. Statutes of the colony of Victoria, Vol. 11, p. 428.

Queensland Act to that colony, unless the party was competent *according to the law of England* to contract a marriage. Doubts also may be raised as to the validity of a second marriage contracted by parties, whose first marriage may have been dissolved by the Court of a colony, within which they had not a real domicil (*a*).

The general rule of Colonial legislation has been in accordance with the principle of 4 Geo. 4. c. 76., which declares marriages to be null and void on account of non-observance of the statutory provisions only in the case where both parties to a marriage have knowingly and wilfully violated them.

No provision has been made by any Imperial Statute for the registration of the marriages of European British subjects solemnized in the colonies, but this has been sufficiently provided for by local Acts. We think that it may be desirable to declare by an Imperial Statute that certified copies of entries in any colonial register book of marriages, kept under the provisions of any Colonial Act, shall be admissible in any Court of Justice or elsewhere, pursuant to the provisions of 14 & 15 Vict. c. 99., as to books of a public nature.

F.—MARRIAGES OF EUROPEAN BRITISH SUBJECTS IN FOREIGN COUNTRIES.

All marriages of British subjects contracted in foreign countries, according to the forms required by the *lex loci contractûs* are recognized as valid marriages by the English Courts except in cases where the parties would not be competent, by the law of England, to contract a valid marriage. It may not, however, be always possible for a British subject in a foreign country to avail himself of the forms of the *lex loci contractûs*, by reason of a difference of religion as in Mahommedan or heathen countries, or by reason of a difference of confession, as in some Christian countries, where marriage can only be lawfully solemnized between parties who confess themselves to be members of the Established Church. Accordingly, in foreign countries, where either by express treaty or by the comity of nations the privilege of exterritoriality has been enjoyed by British subjects within any defined limits, such as the factory of a trading company or the hotel of an ambassador, the marriage of a British subject solemnized within such limits according to the law of England, as it existed antecedent to the passing of Lord Hardwicke's Act, has always been upheld by English courts as a valid marriage. Upon a similar principle, the marriage of a British subject solemnized according to the same law within the lines of a British army serving abroad has been upheld as a valid marriage by English courts. But as a doubt might possibly be thrown upon the validity of the latter class of marriages, there having been an absence of judicial recognition of them before Lord Stowell's decision in 1821 in favour of a marriage solemnized by the chaplain of the English forces in occupation of the Cape of Good Hope between two British subjects in a private house (*b*), it was thought well to remove all doubts respecting any of the three classes of marriages above mentioned by passing a declaratory Statute in 1823, 4 Geo. 4. c. 91., under which it was declared and enacted that all marriages solemnized by a minister of the Church of England in the chapel or house of any British Ambassador or Minister residing within the country, to the Court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing in such factory, and all marriages solemnized within the British lines by any chaplain or officer or other person officiating under the orders of the Commanding Officer of a British army serving abroad, shall be deemed and held to be as valid in law, as if they had been solemnized within Her Majesty's dominions with a due observance of all forms required by law.

A fourth class of marriages ought not to be overlooked, which is occasionally solemnized abroad between European British subjects, and which the framers of 4 Geo. 4. c. 91. omitted to notice, although it does not seem to be distinguishable in principle from a marriage solemnized within the lines of a British army serving abroad, namely a marriage solemnized on board a British vessel of war on any foreign station. There does not appear to have been any judicial recognition of the validity of such a marriage, although four or five at least of such marriages are annually solemnized. The framers, however, of the Consular Marriage Act took care to remove all doubts re-

(*a*) Pitt *v.* Pitt, 3 Macqueen, p. 627. (*b*) Ruding *v.* Smith, 2 Consistory Reports, p. 371.

specting any previous marriage solemnized on board of a British vessel of war by a minister of the Church of England, or by a minister of the Church of Scotland, and respecting any previous marriage solemnized according to any religious rite or ceremony, or contracted *per verba de præsenti* on board a British vessel of war on any foreign station in the presence of the officer commanding such vessel, but they made no provisions for future marriages. On the other hand, since the passing of the Consular Marriage Act in 1849, seventy or eighty of such marriages have been solemnized, the certificates of which are recorded in the registry of the diocese of London, and it would appear from these certificates that about one-fourth of the number of such marriages have been solemnized or contracted in the presence of the Commanding Officer of the vessel, and not in the presence of any minister of religion. We recommend that this class of marriages should be placed for the future by a declaratory Statute upon the same footing of undoubted validity, as marriages within the lines of a British army serving abroad.

There is a further class of marriages of which no certificate has ever been recorded in the registry of the diocese of London, but for proof of which provision has been made by the Merchant Shipping Act, 1854.

It is provided by section 282 of that Act that every master of a merchant ship shall enter in the official log book of the vessel every marriage taking place on board his vessel, with the names and ages of the parties, whilst there is no statutory authority for the solemnization of any such marriage on board of a British merchant ship, nor has any statute ever been passed to give retrospective effect to any such marriage. In the case however of both the parties being British subjects emigrating to a British colony, if their marriage has been solemnized on board a British merchant vessel by a priest in holy orders, its validity would probably be upheld in an English court upon the analogy of legal decisions, that British emigrants carry with them the common law of England, until they become subject *ratione loci* to some other law.

The practice of maintaining British factories in foreign countries under the protection of British Law may be said to have totally ceased in Europe, although the trading companies, to which the factories belonged, have in some cases continued to carry on their trade after the abolition of their ex-territorial privileges.

It has accordingly been found advisable in certain cases, where the Chaplains of such companies, (*a*) or Chaplains appointed by the Bishop of London, (*b*) have continued to solemnize marriages between British subjects in the chapels of such trading companies or in private houses before witnesses, to pass declaratory statutes to remove all doubts as to the validity of such marriages.

A general provision was made in 1849 for removing all doubts retrospectively as to the validity of any such marriages by 13 & 14 Vict. c. 68. s. 20.

This statute has dealt retrospectively with three classes of marriages respecting which doubts might be raised as not being within the scope of 4 Geo. IV. c. 91.

1. All marriages, both or one of the parties being subjects or a subject of this realm, which before the passing of this Act have been solemnized in any foreign country or place, or on board a British vessel of war on any foreign station, by a Minister in Holy Orders according to the rites and ceremonies of the Church of England and Ireland, or by an ordained minister of the Church of Scotland.

2. All marriages between the like parties, which have been solemnized according to any religious rites and ceremonies. or contracted per *verba de præsenti*, in any foreign country or place in the presence of any British Ambassador, Minister, Chargé d'Affaires, Consul-General, Consul, or Vice-Consul, exercising his functions in the foreign country or place, in which such marriages have been had, or on board a British vessel of war on a foreign station in the presence of the officer commanding such vessel.

3. All marriages between the like parties, which have been solemnized according to any religious rites or ceremonies, or contracted per *verba de præsenti* in any foreign country or place, and registered by or under the authority of any British Consul-General, Consul, or Vice-Consul, exercising his functions within such foreign country or place, the signatures of the parties being written in the register.

(*a*) 4 Geo. IV. cap. 67. (*b*) 3 & 4 Will. IV. cap. 45.

The main object, however, of this Act was to afford prospectively greater facilities for the marriages of Her Majesty's subjects resident abroad, and more especially, as it has been represented to us, to facilitate the marriages of British subjects, who, though they had not lost the character of British subjects, had by a long residence in a foreign country formed local connexions, and desired to intermarry with natives and other than British subjects (*a*). For this purpose any British Consul General, Consul, Vice-Consul, or Consular Agent, specially authorized in writing under the hand of one of Her Majesty's Principal Secretaries of State, may allow to be solemnized in his presence according to the rites of the United Church of England and Ireland, or according to such other form and ceremony as the parties thereto may see fit to adopt, or may personally solemnize, if the parties so desire it, any marriage, one or both of the parties thereto being a subject or subjects of this realm, provided always that such marriages shall be solemnized at the British Consulate with open doors, between the hours of 8 and 12 in the forenoon, in the presence of two or more witnesses, and that, in the solemnization of any such marriage not solemnized according to the rites of the United Church of England and Ireland, in some part of the ceremony and in the presence of the Consul and the witnesses, each of the parties shall solemnly declare that they know not of any lawful impediment to their marriage, and shall call the parties present to witness that they take each other respectively to be lawful husband and wife. Due provision has been made for the registration of all such marriages in duplicate books according to the form required by 6 & 7 Will. IV. c. 86., and for the yearly transmission of copies of all entries in such books through one of Her Majesty's Principal Secretaries of State to the Registrar General in England.

The Act has been found to work remarkably well, but it has been represented to us that there are some particulars in which it might be improved. A great difficulty in the way of many persons arises from the regulation that both parties must have dwelt within the district of the Consul, before whom the marriage is to be solemnized, not less than one calendar month before notice can be given of their intention to intermarry; and that no marriage can be solemnized until after the expiration of seven days, if the marriage is to be by licence, and of 21 days, if the marriage is to be by banns, after the notice has been given. It happens however not unfrequently that one of the parties intending to contract marriage is resident in England, or in another consular district, and cannot afford to leave his occupation for so long a time (*b*), or that a young lady having previously made an engagement in England or elsewhere to be married to a party, who has gone out to China or some other distant country before the marriage has been celebrated, goes out to be married, and is obliged to reside in the foreign country without any relative to protect her for five or seven weeks, as the case may be, before the marriage can be solemnized (*c*). It appears to us that this regulation causes great inconvenience to individuals without any corresponding advantage to the public, and that it would be sufficient if the party only, who gives the notice to the Consul, should be required to be resident in the consular district for a calendar month next preceding the giving of the notice. We recommend that the Act should be amended in this particular. If the other requirements of the Act are maintained, as regards the time which is to elapse, after notice has been given, before the marriage can be solemnized, and the declarations which are to be made by both parties, where the marriage is to be by licence, we think it will be unnecessary to require the party coming from a distance to have given any notice to the local authorities of the country, where such party may have been previously resident. In the case of marriages intended to be solemnized by licence from the Superintendent Registrar in England and Wales, it has been thought sufficient by the Legislature that notice of such marriage should not be given to more than one Superintendent Registrar (*d*).

Another difficulty arises where one of the parties is a subject of the country, wherein the marriage is to be solemnized, and the *lex loci* does not recognize as valid a contract of marriage made at the British Consulate (*e*). We think it would be desirable with a view to meet this difficulty that the parties should be enabled to have their marriage solemnized, if they so desire it, in any place of religious worship, in which marriage may be solemnized according to the *lex loci*, and that the Consul should be empowered to be present at the solemnization of any marriage, where one of the parties is a British subject, at any such place of religious worship within his consular district without any restriction as to legal hours, and to register the marriage: the entry in the Consular Registry

(*a*) App., p. 193. (*b*) App., p. 87. (*c*) App., p. 190.
(*d*) 19 & 20 Vict. cap. 119. (*e*) App., p. 35.

Book being signed by the Consul and by both the parties married and by two witnesses present at the marriage. But we think that no marriage solemnized by the Consul himself ought to be rendered valid by British law (if invalid by the *lex loci*) except where both the married parties are British subjects. We recommend that the Act be further amended in this particular; and that a scale of fees to be paid to the Consul for his attendance at such marriages and the registration thereof be settled as the circumstances of each consulate may require, by one of Her Majesty's principal Secretaries of State.

We humbly submit this our Report to Your Majesty's royal consideration.

CHELMSFORD.	(L.S.)	JAMES PLAISTED WILDE.	(L.S.)
*	(L.S.)	WILLIAM PAGE WOOD.	(L.S.)
LYVEDEN.	(L.S.)	ROUNDELL PALMER.	(L.S.)
SPENCER HORATIO WALPOLE.	(L.S.)	CAIRNS, C.	(L.S.)
WILLIAM MONSELL.	(L.S.)	G. YOUNG.	(L.S.)
JOHN INGLIS.	(L.S.)	TRAVERS TWISS.	(L.S.)
THOMAS O'HAGAN.	(L.S.)	A. C. STIRLING MURRAY DUNLOP.	(L.S.)

July 1868.

DISSENT AS TO DIVORCE.

By The Right Hon. W. Monsell and The Right Hon. Mr. Justice O'Hagan.

In appending our names to this report, we, the undersigned members of Your Majesty's Commission, are compelled to dissent from the recommendations contained in page xxvi, which affect the law of divorce and the jurisdiction of Divorce Courts, because we believe that the marriage tie is indissoluble, and that divorce *à vinculo* is contrary to the law of God.

WILLIAM MONSELL. (L.S.)

July 1868. THOMAS O'HAGAN. (L.S.)

REASONS FOR SANCTIONING CONSENSUAL MARRIAGES IN SCOTLAND,—SUGGESTIONS FOR THE IMPROVEMENT OF THE SCOTCH MARRIAGE LAW,—AND ARGUMENTS IN FAVOUR OF LEGITIMATION PER SUBSEQUENS MATRIMONIUM.

By The Lord Justice General of Scotland.

I dissent from so much of the Report as involves a proposal to abrogate the essential principle of the Marriage Law of Scotland,—that present consent to be husband and wife deliberately interchanged between a man and a woman, labouring under no incapacity to contract, makes marriage between them, without the necessity either of a religious ceremony or of a compliance with any statutory forms or solemnities.

The evils imputed to the Scottish system, in so far as it is based on this essential principle, appear to me to be greatly exaggerated, and to be much more than overbalanced by its beneficial influence and effect. In particular the existing law of Scotland ensures an absolute certainty that every regular marriage shall be unimpeachably valid. Present consent being all that is indispensable to constitute marriage, the evidence of that consent, in the case of a regular marriage, is of course complete, and nothing can obstruct its efficacy. The consequence is, that hitherto persons regularly married *in facie ecclesiæ* in Scotland have been entirely exempted from those harassing doubts as to the validity of their marriages, which have always more or less frequently occurred in England, and which must be of possible occurrence in every system, however well planned and matured, which makes forms and ceremonies essential to the validity of the contract.

* The Earl of Mayo did not think that he should be justified in signing the Report, his official duties having prevented him from attending the later meetings of the Commissioners.

The extreme rarity of irregular marriages in Scotland shows how greatly the evils supposed to be attendant on the Scottish system have been exaggerated. In the interests of society it appears to me of infinitely less importance, to save the very few persons who contract irregular marriages, from the consequences of their own conduct,—or to protect any one who by his culpable tampering with law and morality puts himself in the imaginary position of "not knowing whether he is married or single,"—than it is to ensure as matter of absolute certainty the validity of every regular marriage.

I am not insensible of the value of uniformity of the Marriage Law in all parts of the United Kingdom, provided that object could be attained at no more than an adequate cost. But there are some things more valuable than such uniformity. It is of paramount importance, that a law so closely interwoven with the social and domestic relations, and exercising so powerful an influence on the moral condition of a people as the Law of Marriage, should be not merely agreeable to the population at large, but should command their cordial sympathy and respect. Such is the Marriage Law of Scotland, in its leading principles, to the people of Scotland now. But such would not, in my opinion, be the law proposed to be introduced and extended to Scotland by this Report. There was ample evidence before the Commissioners, that the vast majority of the people of Scotland are opposed to such a change.

Improvements may be introduced into the Marriage Law of Scotland without interfering with its essential principle. I notice the following as examples merely :—

1st. Irregular marriages—already effectually condemned by public opinion, and of very rare occurrence—may be still further discouraged by the imposition of penalties, not so much on the contraction of such marriages, as on a failure to register them within a limited time. If these penalties were not illusory, and were enforced, I cannot doubt of their being effective, at least in every case where there is not some motive for continued concealment, of such prevailing urgency and influence on both husband and wife, as must be of the rarest possible occurrence, and would not necessarily be either an immoral or an improper motive.

2nd. I would remove all temptation to the entrapping of a woman into a hasty irregular marriage, for the sake of securing to the husband the uncontrolled disposal of her fortune, by enacting, that in the case of irregular marriages the property of the wife should not absolutely pass to the husband, but that power should be given to the Court of Session to make for the parties such settlement of their property as they ought, if they had been well advised by friends on either side, to have made before marriage.

3rd. Besides discouraging irregular marriages, I would smooth the way to the celebration of marriage *in facie ecclesiæ* among all classes, including the poorest, by simplifying to the utmost attainable point the preliminary requisites of such a marriage, and in the same degree reducing the expense. I cannot concur in the recommendations of the Commissioners on this matter. I think the proposed requirements preliminary to marriage are unnecessarily burdensome, both as regards the forms, and the time which would be required for their due observance.

But my chief objection to the proposed Marriage Law, is one which I am aware is equally, or even in a greater degree, applicable to the existing Marriage Law of England. Neither the one nor the other shows sufficient favour for legitimacy. A system like that of the Code Napoleon may, with much less danger or permanent mischief, declare marriages, apparently regular, to be nevertheless void, in respect of non-compliance with statutory forms, because the offspring is not thereby necessarily bastardised. The parents by re-marriage can legitimize their children previously born. But the law of England has constantly resisted the adoption of legitimation *per subsequens matrimonium*, and has thus hopelessly and irremediably bastardised the issue of any marriage, which, though apparently regular, is afterwards found to be void. In my opinion, a Marriage Law, which at once requires certain prescribed forms as essential to the validity of marriage, and rejects legitimation *per subsequens matrimonium*, and every equivalent rule, is the Marriage Law most opposed in theory to enlightened social policy. It is found nowhere, so far as I know, but in England; and it is not likely to be voluntarily accepted in any other country.

In England it may be consonant to the wishes and feelings of the people, because it has prevailed for centuries and has struck its roots deep into the social system; and therefore one strong consideration, which I have already suggested, for refraining from interference with the essential principle of the law of Scotland, would in like manner withhold me from tampering with the principle of the English law, however erroneous I may conceive it to be. But I cannot help venturing, in the interest of the people of

England, to say, that overruling expediency,—which has dictated much legislation in all countries, for the purpose of cutting off objections of irregularity and all other technical objections, to existing rights, by a limitation of time,—and which has recently found expression, without legislation, in the arrangements of insurance companies for issuing life policies, which after a short time become absolutely indisputable, even on the ground of fraud,—ought to suggest some analogous provision for the quieting of men's minds and relieving their anxiety, respecting the validity of their marriages, the social status of their wives, and the legitimacy of their children.

It is not proposed in the present report to disturb the law of legitimation *per subsequens matrimonium* in Scotland. But if one great end of Marriage Law reform is uniformity in the laws of the different parts of the United Kingdom, it will be very difficult (after a general statute, founded on the recommendations of this report, shall become law) to resist the progress and expansion of the favourite idea of uniformity, when it comes to be suggested by-and-by, that the small remnant of disconformity, still to be found in the Scottish legitimation *per subsequens matrimonium*, should in its turn be abolished.

If this anticipation be well founded, the ultimate result will be, to subject Scotland to what I cannot but hold to be the unnatural and pernicious rule of the English Marriage Law, merely because it is the law of England, though opposed alike to the sound philosophical principles and to the practical experience which have dictated the legislation of other European States.

Entertaining a settled conviction, founded on experience and a patient study of the subject, that the Marriage Law of Scotland is preferable in theory and principle to the Marriage Law of England, and that it has in practice been highly beneficial, in its influence on the social condition and morality of the people, I cannot assent to a proposal to alter that law in any particular affecting its essential principle.

JOHN INGLIS. (L.S.)

July 1868.

SUGGESTIONS AS TO CERTIFICATES.

By Her Majesty's Advocate General.

In adding my name to the above report, I venture to suggest that the certificate of the minister of religion ought not to be introduced as a substitute for banns, without the safeguard which protects at present the certificate of the civil authority, namely, that the officer, under whose authority the certificate is to be granted, should in all cases be a different person from the officer who is to solemnize the marriage. Without some such safeguard, I think that the privacy of the certificate will tend to revive some of the evils which Lord Hardwicke's Marriage Act has operated to restrain.

I am further of opinion that,—inasmuch as parties are to have a free choice as to the place of their marriage,—there should be some public registry appointed in every diocese or district, to which the minister of religion, upon receiving notice of the intention of parties to intermarry, should be required to report such notice, and make application for a certificate, so that parents or guardians may have an opportunity, where a clandestine marriage is anticipated, of forbidding the grant of such certificate, in like manner as they are now empowered by law to do in regard to the issue of the Superintendent Registrar's certificate.

TRAVERS TWISS. (L.S.)

July 1868.

APPENDIX:—LORD CHELMSFORD'S CIRCULAR, AND THE RESPONSES THERETO.

In June 1865 a Circular Letter, signed by Lord Chelmsford on behalf of the Commissioners, was addressed to all the Bishops, and a selection of the Clergy of the United Kingdom,—Protestant and Roman Catholic,—as well as to certain Ecclesiastical Officers and other individuals suggested as likely to give important practical information on the subject of the inquiry.* The Circular was as follows :—

LORD CHELMSFORD'S CIRCULAR.

London, 8th June 1865.

I beg to inform you that Her Majesty has been pleased to issue a Commission for the purpose of inquiring into and reporting upon "The state and operation of the "various laws now in force in the different parts of the "United Kingdom of Great Britain and Ireland, with "respect to the constitution and proof of the contract "of marriage, and the registration and other means of "preserving evidence thereof."

In conducting this important inquiry the Commissioners are naturally anxious to avail themselves of the assistance of those who possess the means of accurate information upon the different questions to which they must direct their attention; and on their behalf and with their concurrence I have to request you to favour them, at your earliest convenience, with any observations and suggestions which may occur to you upon your consideration of the whole subject.

But although the Commissioners would desire to have the advantage of your judgment upon the constitution of the marriage contract (religious and secular), its proofs, its registration, and the preservation of the evidence respecting it, they are more particularly anxious to receive information as to the practical operation of the present law in those places with which you are best acquainted.

I have the honour to be
Your faithful Servant,
Chelmsford.

RESPONSES TO LORD CHELMSFORD'S CIRCULAR.

No. 1.—The Lord Auckland, Bishop of Bath and Wells.

My Lord, 15th June 1865.

It seems to me that no improvement can be made in the registration of marriages as it now exists. It may be a question whether the fee upon marriage licences might not with advantage be reduced. Marriages by licence do not increase as population increases. The evil that exists with respect to rural parishes is this: If a man wishes to marry his wife's sister, for instance, he goes into one of the neighbouring great towns, where he is not known, and there publishes the banns; he may take a lodging for 15 days, but more often the clerk of the parish, who is generally deputed by the incumbent to look after these things, assumes that he is resident. I do not touch upon marriages by superintendent registrars, but I am told that abuses exist with respect to previous inquiry as to marriages performed in their offices.

I have the honour to be, &c.

No. 2.—The Lord Bishop of Ely.

The Bishop of Ely.

Ely House, Dover Street, W.
15th June 1865.

My Lord,

In reply to your Lordship's letter asking an opinion on the present securities provided by law for the proof of the marriage contract and against the contraction of illegal marriages, I beg leave to state, that from my own experience I consider them generally very satisfactory in English parishes. The chief practical dangers appear to me to be the following.

In large parishes it is almost impossible for the clergyman to make personal inquiries concerning parties who may take up a temporary residence for the purpose of having the banns of marriage published in the parish church. All such inquiries, therefore, are inevitably left to the parish clerk, whose interest it is to inquire as little as possible. Hence, if any persons desire to contract an illegal marriage, they choose one of the populous parishes of our large towns, where they readily escape notice, and where they know that the clergyman is too busily occupied, too overworked, to be able to investigate all the questions concerning them which ought to be known; and however severe be the penalty which may be inflicted on a clergyman for neglect of this kind, the neglect will still continue, because one man can only do one man's work. The other apparent danger is connected with the publishing of banns in union workhouses, which, as far as my experience goes, does not secure real publicity. The banns are read out by the clerk of the union frequently when very few guardians are present; and it is very doubtful whether those who happen to be present know anything of the majority of those who are in this manner qualifying themselves for matrimony.

It has lately been brought to my notice that the increase in the number of persons married by licence has not kept pace with the increase of the population, if it has not actually diminished. This has been attributed to the great expense of a licence, which deters many from obtaining one. It has been thought, I know not with what justice, that this expense also tends rather to send parties from the established church to seek marriage at the registrar's office or elsewhere, the security being less everywhere than it is when the marriage is solemnized in the Church of England.

I do not think that any other considerations connected with this subject especially present themselves to my mind. In general, I have no doubt that in England the securitie sare great, if those who have to administer the law act carefully and honestly.

I have the honour to be, &c.

No. 3.—Fitzherbert Macdonald, Esq., Registrar to the Bishop of Salisbury.

The Registrar of the Bishop of Salisbury.

Diocesan Registry, Sarum,
17th June 1865.

My Lord,

I have the honour to acknowledge the receipt on the 16th of your Lordship's circular of the 8th instant, in which, on behalf of the Royal Commission of Inquiry into the Marriage Laws, you ask for any observations and suggestions which might occur to me upon consideration of the whole subject, and more particularly upon the practical operation of the present law in those places with which I am best acquainted.

The branch of the marriage laws with which I am most intimately acquainted is that relating to the grant of licences for marriage in the Church of England, and with reference to it I beg to observe, that the law seems to me to be defective in not constituting false swearing before the Ecclesiastical Judge to obtain a licence the crime of perjury.

This defect has very recently prominently presented itself to my notice, in a case, in which by means of an oath taken in Doctors Commons, a man living in this diocese obtained a licence, and actually went through the form of marriage in a London church with his father's widow.*

In the course of my official life several other instances of such false swearing, though not leading to so horrible an outrage upon morality as the one I have mentioned, have come before me, and I cannot but think that they are in a measure attributable to the leniency of the law.

There is another point I may mention with reference to the consent of parents, &c. to the marriage of minors. Under the subsisting Acts of Parliament a licence may

* The names of several individuals to be addressed were furnished by Lord Chelmsford, Lord Lyveden, Mr. Justice O'Hagan, Vice-Chancellor Wood, Mr. Monsell, Dr. Twiss, and Mr. Dunlop. The circulars were accordingly despatched to all the Archbishops and Bishops in England, Scotland, and Ireland (Protestant and Roman Catholic); to the Moderator of the Established Church of Scotland, the Moderator of the Free Church of Scotland, and to the Moderator of the United Presbyterian Church of Scotland; to the Dean of Chichester; to the Archdeacon of Berks; to the Rev. Chancellor Burton, the Rev. Chancellor Thurlow; to the Revs. John Rogers, H. Cooke, John Edgar, John Porter, J. Scott Porter, Wm. Arwick, Robert Wallace, Wm. Robinson, J. Macnaughtan, R. J. Bryce, W. Donnelly (connected with the Presbyterian Church in Ireland); to the following members of the Dissenting Clergy in England, namely, the Revs. Thomas Binney, R. Vaughan, Dr. Halley, Dr. Brock, J. Howard Hinton, R. B. Aspland; the President and Vice-President of the Wesleyan Conference in England; to the following members of the Dissenting body in England, namely, Sir Francis Crossley, Bart., M.P., E. Baines, Esq., M.P., Samuel Morley, Esq., M.P.; to the following Clergy of the Roman Catholic Church in Ireland, Professors of Theology, namely, the Revs. C. W. Russell, George Cidley, H. Neville, John O. Hanlon, Patrick Murray, George Crolly, and Gerald Molloy. To the following Registrars in England, namely, Ralph Barnes, John Shephard, Joseph Buckle, J. Davison, C. Woodridge, William Fell, S. Dunning, John Kitson, J. M. Davenport, H. P. Gates, A. C. Veley, J. H. Clifton, Charles Stewart, Fitzherbert Macdonald, Benjamin Hawkridge, Esquires. To all these the circulars were despatched; and likewise to sundry others, especially to David Salomons, Esq., M.P., and to James Stark, Esq., M.D., Superintendent of Statistics and Assistant Census Commissioner for Scotland.

* Lord Chancellor Cottenham mentions cases of marriage between a grandmother and her grandson, and between a man and his wife's sister's daughter. Par. Deb., 5 March 1835.

issue upon the oath of the applicant alone, that such consent has been obtained, without further evidence. In this diocese it is the *practice* to require further evidence of consent, either by the direct oath of the parent or otherwise; but as that rule is not one of universal adoption, and I have reason to think many clandestine marriages arise from its non-observance, I venture to suggest that in any alteration of the law its enforcement should receive consideration.

I fear that what I have written may perhaps not be in the direction contemplated by your Lordship, and I therefore beg to add, that any particular point to which the Commissioners may wish me to address myself shall receive my earnest attention.

I have the honour to be, &c.

The Bishop of Durham.

No. 4.—The Lord Bishop of Durham.

Auckland Castle, Bishop Auckland,
22nd June 1865.

My Lord,

I have to acknowledge the receipt of your Lordship's letter as Chairman of the Royal Commission on the Contract of Marriage.

The point which has been brought chiefly and frequently under my notice, as bishop of this diocese, is the evil which arises from the secresy of the marriages at the registry office, and from the facility with which parties resident in the country get their banns published and their marriage solemnized in the town parishes in which they do not reside. The lower classes shrink from the publicity of the publication of banns in their own parish, and as they cannot afford the expense of a marriage licence, they have recourse to the registry or to some neighbouring town church.

I believe this practice, which is attended with many evils, might be very materially diminished if the Government stamp on marriage licences was reduced from 12*s.* 6*d.* to 2*s.* 6*d.*, whilst the Treasury would not suffer, because the number of licences issued would so largely increase. But accompanying such a change, *every* incumbent ought to be made a surrogate for issuing licences for his own parishioners, and the fee for such licence fixed, and of small amount.

At present there is no punishment to any party making a false statement, and thus having their banns published at the church of a parish in which they do not reside. Whilst it is quite impossible for the clergyman, who is now by law punishable for celebrating such marriages, to ascertain the falsehood of such statements, as his time, if his parish be large, is entirely occupied by his other necessary duties. It would be, therefore, advantageous to assimilate the law to that which regulates the notice of banns at the registry, and to make a false statement in either case, perjury. It would also, I believe, be productive of much good if the punishment were only a *fine* for marrying parties not resident in the parish; and if the officiating minister, and more especially his *clerk*, were obliged to pay as fine twice or thrice the amount of marriage fee.

It increases the publicity and consequently the hindrance to marriages by banns, that where the parties live in different parishes, the banns must be published in both. It would be a sufficient security if they were only published in one, and a certificate obtained from the clergyman of the other that he knew of no hindrance to the marriage.

It would be a great check to improper marriages at the registry, if the registrar were required to send notice of the intended marriage to the clergyman of the parish from which the parties came.

I have the honour to be, &c.

The Deputy Registrar of the Diocese of Oxford.

No. 5.—John M. Davenport, Esquire, Deputy Registrar of the diocese of Oxford.

24th June 1865.

My Lord,

The following are the only practical points which it occurs to me to suggest in reply to your Lordship's letter of the 8th instant.

1. To ground an application for a marriage licence an affidavit is necessary, in which, among other facts deposed to, it is stated that one of the parties has had his or her usual place of abode for 15 days last past within the parish in the church of which the marriage is to be solemnized. Now I believe that this is constantly abused. Parties in rural places, desirous of secresy, or from other motives, resolve to be married at a church in a neighbouring town or city, and simply engage a room without occupying it, for the requisite period, and, upon that, or even a less pretext, depose to the fact of residence; some ignorantly believing that a legal residence has been created, but others wilfully perjuring themselves. The surrogate who grants the licence upon such an affidavit does not attempt to impugn the veracity of the deponent, and the clergyman who performs the marriage considers himself bound by the licence, without inquiry.

2. In the case of marriage by banns (4 Geo. 4. cap. 76. s. 7.), the clergyman is at liberty to refuse to publish the banns unless he has had seven days' notice of the names and address of the parties; and the law has imposed upon him the duty of making inquiries as to the relation and residence of the parties. Could not some like authority and veto be given to a clergyman in the case of a licence?

3. By section 14 of the Act, the consent of the guardian of a minor is required before a marriage licence can be granted; but this consent is generally presented in writing without any verification; and I would suggest that the personal oath of the guardian should be substituted.

I have the honour to be, &c.

The Re

No. 6.—The Rev. William Robinson, President of the Primitive Methodist Conference.

42, Synge Street, Dublin,
26th June 1865.

My Lord,

I have the honour of acknowledging the receipt of your letter of the 8th instant, in reference to the law bearing upon the contract of marriage in this part of the United Kingdom. I regret, my Lord, that I am not able to give you much information on the subject.

The Christian body to which I have the privilege to belong do not perform the ceremony of marriage among themselves. The ministers of the Society leave the members to go to the Established and other churches. Consequently I have not given the matter that mature deliberation that would enable me to form a correct judgment.

The law, as it now exists, does not give general satisfaction; and I believe what is wanted is one uniform law binding upon all parties.

I have the honour to be, &c.

No. 7.—The Right Rev. John P. Leahy, D.D., Roman Catholic Bishop.

Violet Hill, Newry, 28th June 1865.

My Lord,

In reply to your Lordship's letter written on behalf of the Commissioners appointed by Her Majesty for the purpose "of inquiring into, and reporting upon the state "and operation of the various laws now in force in the "differents parts of the United Kingdom of Great Britain "and Ireland, with respect to the Constitution and Proof of "the Contract of Marriage, and the Registration and other "means of preserving evidence thereof," I have to make the following statement:—

First, as to the constitution of marriage, we regard it as an indissoluble union resulting from a contract by which a man and woman, not forbidden or incapacitated by any impediment of the natural, divine, or ecclesiastical law, bind themselves then and there (*per verba de presenti*) to live thenceforward as husband and wife. The marriage contract was always looked on as a religious and not merely a civil act. But it is a dogma of the Catholic faith that marriage was raised by Christ our Lord to the dignity and efficacy of one of the seven sacraments of the new law We hold, moreover, that He entrusted all the sacraments, marriage included, to the guardianship of the Church, with power to frame whatever enactments might be expedient to protect them from profanation or irreverence; and we maintain that to the Church exclusively belongs the authority to impede the matrimonial contract among Christians. We can never recognize in the State a right to interfere by any prohibition in the constitution of marriage, no more than we can admit that it could validly make laws relative to baptism or the blessed Eucharist. Marriages contracted in private, without the presence of a priest and witnesses, were at all times forbidden as sinful; yet they were not invalid, until the Council of Trent, to prevent the many evils which result from clandestine wedlock, enacted that marriages contracted without the presence of the parish priest of one of the parties, or of some priest delegated by him, or by his bishop, should for the future be null and void. (Sess. xxiv. de Reformatione Matrimonii, cap. 1.) But the Council added that this law was not to come into operation until thirty days after its publication in each parish. The law has been published in all the Catholic parishes of Ireland; in some, however, not until the 2nd of December 1827. As it binds Catholics alone in this country, according to the declaratory decree of Pope Pius VI., 7th March 1785, we consider the clandestine marriage of a Protestant with a Catholic as valid, though sinful. But the marriage in Ireland of two Catholics before the Government registrar, or before any priest or even bishop, except the parish priest, or bishop of one of the parties, or a priest delegated by him, we hold to be utterly void, although the statute law of the land admits its validity.

While we maintain that the State exceeds its powers when it interferes with the constitution of marriage, we freely acknowledge that it possesses an unquestionable right to require proofs of the marriages of its subjects, and to take care that they are properly registered. Those important objects will be fully secured, so far as Catholic marriages in this country are concerned, if the provisions

of Mr. Monsell's Act,* passed the Session before last, be duly enforced.

The statute law which sanctions the marriage of Catholics in Ireland by a Catholic priest works well; and the introduction of any other system, especially that of civil marriages antecedent to the religious rite, would cause deep and wide-spread dissatisfaction. There is one grievance, however, in the present state of the law which furnishes strong reasons for complaint. If a Catholic clergyman should celebrate the marriage of a person who, though a Protestant, pretended to be a Catholic, or who though actually a Catholic, had not been one for the whole of the previous year, that marriage would be invalid, and the officiating clergyman would incur severe penalties. Surely it is not asking anything extravagant to beg that the state of the law on this point may be amended.

I have reason to believe that since Mr. Monsell's Act came into operation, or shortly afterwards at farthest, certificates of the marriages celebrated in this diocese of Dromore were always forwarded to the Government registrar, thereby furnishing the State with the names and residence of the parties married, of the witnesses present, and of the officiating Catholic clergyman. It is, of course, the province of the Government or Legislature to devise the best means of preserving a record of those certificates.

I have the honour to be, &c.

No. 8.—The Worshipful Charles James Burton, M.A., Chancellor of the Diocese of Carlisle.

My Lord, Carlisle, 6th July 1865.

I have the honour to acknowledge the receipt of your Lordship's letter of the 8th of June, in the name of the Royal Commission on the Laws of Marriage.

The Act† passed in the year 1856 in restraint of the marriage contract in Scotland, so far as concerned the marriages of persons not resident within that part of the kingdom, while it has mitigated a great evil to which our northern counties, and especially Cumberland, had been subjected, does yet admit of a considerable improvement. It requires one of the parties to have had a certain residence in Scotland; the other needs not to have had any; there is also a power, but no compulsion, of registration. It seems to me that in any such case the marriage ought not to be holden valid without a previous notice; and, likewise, that the registration should be an essential to the marriage, or that no other proof of it should be receivable. This would not interfere with the civil character maintained in Scotland.

As regarding marriages in England, I would beg to draw the attention of the Commissioners to two other points. The first is as to a certain doubtfulness in relation to the marriages of persons, one of whom may be resident in Scotland, under publication of banns. Although in common sense the publication of banns in Scotland ought to be received in England, yet the obligation to receive it is not duly ascertained; and I therefore submit that in any Act of the Legislature regulating marriages, a declaratory clause should be inserted so directing, from whatever religious body it may come.

The other point, though clear to me, is not so to many others. Many parochial districts have been formed, and are in the course of formation, under the authority of the Bishops and the Ecclesiastical Commissioners, with power for the solemnizing of marriages in their respective churches. It has been made a question whether the persons comprehended within the new districts still retain their right of marriage in the old. As those new districts are created parishes for all ecclesiastical purposes, I consider that right to be abrogated. I am, in my position, constantly feeling the inconvenience. It is the wish, a natural one, of many to continue that right, and they cannot be persuaded that it is lost. A declaratory clause in this respect also is advisable. I would observe, as bearing on this subject, that a better publicity should be given previously to the formation of districts, and that the boundaries should be carefully made known.

I have the honour to be, &c.

No. 9.—James Stark, Esq., M.D., Superintendent of Statistics and Assistant Census Commissioner for Scotland.

General Registry Office of Births, &c.,

My Lord, Edinburgh, 7th July 1865.

Agreeably to your Lordship's request, received the 27th June, I enclose a paper which embodies my views regarding marriage, and the amendments which might be made on the Laws of Marriage. My attention has been chiefly directed to the Marriage Laws of Scotland, with which I have had much to do; but I have ventured to offer a few suggestions for the amendment of the Marriage Laws of the three kingdoms.

I have the honour to be, &c.

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* The 23 & 27 Vict. c. 90.

† 19 & 20 Vict. c. 96. [illegible]

The Marriage Laws of Scotland, with Suggestions for their Amendment.

With the Marriage Laws of Scotland, the Royal Commissioners on the Laws of Marriage must be familiar; but as these laws have been misunderstood in England, a few remarks may be offered regarding them.

By the Law of Scotland, Marriage is a purely civil contract, of which the essence is the consent of the parties to accept each other as husband and wife; and this, like other contracts, is allowed to be proved by writ, by parole testimony, or by inference from the conduct of the parties.

But, although this latitude be allowed in proving the existence of a marriage, the Scottish Law, strictly speaking, only authorizes what may be termed *regular marriages*—that is, marriages after the publication of banns. Though not a legal requisite, the presence of a minister of religion, and a religious ceremony, are the invariable concomitants of a regular marriage; but no clergyman is allowed to perform the marriage ceremony unless the banns have been duly proclaimed in the church of the parish in which each of the parties resides; and heavy penalties are incurred by the clergyman who neglects attention to that requirement. The law, however, makes no distinction between parties of different religious denominations, but treats all as citizens, with equal rights and privileges; only enforcing the publication of the banns in the parish church, but leaving the parties free to solemnize the marriage as they choose—the validity of the marriage not being affected by the person who forms the marriage ceremony.

Till a comparative recent date, however, regular marriages could only be celebrated by ministers of the Established Church of Scotland. By Act 10 Anne, c. 7. Episcopal clergymen, who had taken the oaths to government, were allowed to perform the marriage ceremony. This privilege was afterwards extended, by the Act 4 & 5 Will. 4. c. 28. to all persons in holy orders of whatever communion, but only on condition that the banns of marriage should be previously proclaimed in parish churches of both parties; and, if the parties were Episcopalians, also in the chapel to which they belonged.

The evil effect of restricting the power of performing the marriage ceremony to the ministers of the Established Church, aided greatly by the intolerant "Clandestine Marriage" Acts of 1661, c. 34. and of 1698, c. 4. was strikingly evidenced in Scotland, where the people have always rebelled against intolerance and tyranny, even when powerless to resist. Under these restrictive laws, regular marriages in many parishes and districts became the exception, and not the rule; and to such an extent did these intolerant Acts urge the people of Scotland to resist the ecclesiastical tyranny which was thus forced on them through the civil power, that it may be safely assumed that during the whole of the eighteenth century, a third of the marriages in Scotland were contracted irregularly; and even far into the nineteenth century, the number of marriages contracted irregularly was very great. The improved legislation above alluded to, viz., allowing every minister of every denomination to perform the marriage ceremony, and letting the Clandestine Marriage Acts fall into abeyance, has done much to promote regular marriages, and to put an end to those contracted irregularly; and now that public opinion regards an irregular marriage as implying a stigma, and that Lord Brougham's Act, 19 & 20 Vict. c. 96. has put an end to Englishmen crossing the border to avail themselves of the facilities of the Scottish Law of Marriage, irregular marriages have become very rare indeed.

A small number of irregular marriages, however, but now not exceeding one irregular for every thousand regular marriages is still contracted in Scotland. These irregular marriages, so far as ascertained and registered amounted to 9 in 1855; to 36 in 1856; to 7 in 1857; to 27 in 1858; to 17 in 1859; to 16 in 1860; and to 27 in 1862. But, with regard to these irregular marriages, the Law of Scotland, so far from regarding them with favour, or even with indifference, *while justly recognizing them as marriages*, imposes severe penalties on all who are concerned in their celebration whether as parties or otherwise. Thus by the Clandestine Marriage Acts, 1661, c. 34. and 1698, c. 4.—Acts still unrepealed—every couple marrying otherwise than before a clergyman, and after publication of banns, may be summarily apprehended, and confined for three months in jail, besides having to pay certain pecuniary fines. The celebrator of the marriage is liable to banishment from the realm (not to return under pain of death), and to such pecunial and corporal pains as the Lords of the Privy Council shall be pleased to inflict, while the witnesses are each liable to a fine of 100*l.* Scots, or 8*l.* 6*s.* 8*d.* sterling.

Such severe penalties are never now imposed. But recent legislation wisely allows irregular marriages to be entered on the public registers of marriage, either by the process prescribed by the Registration Act, 17 & 18 Vict. c. 80. or by Lord Brougham's Marriage Act, 19 & 20 Vict. c. 96. In either case an extract of the marriage from the

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registrar's books is received as evidence of the marriage, without further proof, over all Her Majesty's dominions.

As already mentioned, no marriage in Scotland is regular unless the banns have been published in the church of the parish in which each of the parties resides, and the marriage ceremony has been performed by a clergyman of some denomination or other, or by the persons authorized to solemnize marriages according to the rites of the Jews and Quakers. The banns, however, cannot be made unless each of the parties has resided for six weeks in the parish in whose church the proclamation is to be made. The form of application to the session clerk for the publication of the banns must be certified by two householders, or by one elder of the parish, and it bears that the parties (or one of them) have resided for six weeks in the parish, that they are personally known to them, that they are unmarried, and that they are not within the prohibited degrees of consanguinity. By a law of the Church, not sanctioned by Act of Parliament, the proclamation of the banns cannot be made in the church without the sanction of the minister obtained in writing. But this law of the Church is never acted on; and it would be dangerous for a minister to refuse sanction to proclaim the banns.

All regular marriages, in terms of the Registration Acts 17 & 18 Vict. c. 80. and 23 & 24 Vict. c. 85. must be entered on the marriage registers kept by the registrar of the district within which such a marriage was contracted. The particulars required for the purpose of registration are inserted on a schedule furnished by the registrar to the parties previous to the marriage; and this schedule, duly filled up, and signed by the parties contracting the marriage, by the officiating clergyman (or by the recording officer of the Jews or Quakers) and by two witnesses, must be sent to the registrar within three days after the marriage under a penalty of 10*l.* sterling. The registrar is bound to enter all the particulars in the marriage register; he then signs the original schedule, and at the end of the year transmits it, with his other documents, to the General Registry Office in Edinburgh, where it is carefully preserved. An extract from the marriage register is admissible as evidence of the marriage, without further proof, in all parts of Her Majesty's dominions.

The above statement will satisfy one who is acquainted with the complicated marriage laws of England and of Ireland that the Scottish laws of marriage more nearly approach that simplicity and freedom from burdensome or unnecessary regulation which fit them for a free people belonging to various religious denominations. The requirements of the civil law of marriage in Scotland do not interfere in the slightest degree with the requirements which the church of any religious denomination may demand. The civil law only demands that a contract which is made for life shall be deliberately entered on; that the intention to contract the marriage shall be duly published to all concerned; and that when the marriage has been contracted it shall be duly entered on the public registers. Hence the requirement of six weeks previous residence in the parish and the three proclamations in the parish church. But it leaves the people free to contract the marriage according to their religious creeds; makes no distinction between parties who belong to different churches, as the unjust law of Ireland does; imposes no troublesome restrictions as to time or place where the marriage must be contracted; and regards all inhabitants of Scotland as men of equal rights and privileges, favouring no sect to the prejudice of the others.

But Scotland shows how much enlightened legislation has done to put an end to irregular marriages, and to encourage regular marriages; and it is to be hoped that no legislative enactment regarding marriage will be proposed which will have the effect of limiting the freedom of regular marriage by imposing burdensome or annoying restrictions. When the restrictions were great, or were what the people thought unjust encroachments on the freedom of the subject, people defied them by marrying irregularly, so that the only effect of the restrictions was to encourage irregular marriage, concubinage, and illegitimacy.

It must be remembered that at the time these restrictions in the marriage laws of Scotland existed (viz., limiting the power of performing the marriage ceremony to the clergy of the Established Church, and imposing severe penalties on all others), the parties who rebelled against that law were not alone dissenters; for when the practice began there were few dissenters in Scotland. The parochial registers of that period prove that the parties who defied these unjust and oppressive laws were chiefly members of the Established Church who were, in fact, thus protesting against the freedom of the people being interfered with by a dominant clergy who used their influence with the State to get an Act passed favourable to themselves, but oppressive to all others. When these restrictions were removed, we have seen that the people returned to the regular form of marriage, the law was obeyed, and morality was thereby encouraged.

Although holding that the marriage laws of Scotland are much more perfect than those of England or of Ireland, because they are based on the only true principles which should regulate legislation in marriage, I still think that something may be done to improve them; and it is to these amendments I would beg to direct the attention of the Royal Commissioners. These amendments are drawn up so as to give support to the only true principles on which marriage laws should be founded, viz.; that marriage is a civil contract, of which the essence is the consent of the parties to take each other for husband and wife; that no distinctions should be made between parties of different religious denominations, but that all the inhabitants should be treated alike, as citizens of a free State, with equal rights and privileges; that the essentials which the law shall require for the formation of the marriage contract, or for evidence of the marriage, shall be as simple, intelligible, and as little burdensome, annoying, or expensive as may be, and that they shall not offend the conscience of any.

Suggested Amendments.

I. *Publication of the Banns of Marriage.*—The object of the publication of the banns is to ensure publicity, and that the contract which is to endure for life be entered on with due deliberation. The present law secures both these objects by requiring (for a regular marriage) that the banns shall be proclaimed three several times in the church of the parish in which each of the parties resides; and that before authority is given to publish these banns the parties shall produce a certificate signed by two householders, or by one elder, bearing that the parties have resided in the parish for the six previous weeks, that they are unmarried, and that they are not within the forbidden degrees of consanguinity. The three publications of the banns were originally intended to be made on three consecutive Sundays; but over all Scotland an extra fee gets the three proclamations made on one Sunday.

When all the inhabitants of Scotland belonged to the Established Church publicity was best attained by proclaiming the banns in the parish church. But the state of Scotland has now quite altered, and seeing that, by the most reliable statistics which can now be procured, viz., those of the Registrar-General of Scotland, it appears that only from 44 to 48 per cent. of the population can in any way be claimed by the Established Church, it is imperative that some other means be now adopted for publishing the banns of marriage. This is the more necessary as that church has everywhere abused her privilege, and has raised the fees for the proclamation of the banns far beyond what they ought to be. By this overcharge she has driven large numbers of the lower orders to marry irregularly, or more commonly to live in a state of concubinage, simply because they were unable to pay the high fees charged for the publication of the banns, which would have enabled them to marry regularly.

Following out the principle that the state ought not to legislate for any dominant sect, but for the whole people, independent of sectarian differences, it clearly follows that the publication of the banns of marriage ought to be taken from the Established Church and given to the registrar of the district, who is by law the registrar of marriages. Every party desiring to marry has to procure from him, as it is, the schedule for the registration of the marriage. We ought at same time to give him another schedule, similar to that now used by the Session Clerks, stating the names, professions, and residences of the parties; and two householders ought to append their signatures to that document and certify that the parties (or one of them) have resided for *two* previous weeks in the district, that they are unmarried, and are not within the prohibited degrees of consanguinity. On receiving this the registrar should immediately suspend their names on a board on the outside wall or door of his office or dwelling, where they should hang for a period of eight days.

This alone would not, however, ensure sufficient publicity, though it might give a sufficiently legal notice. The names of the parties should, therefore, be also proclaimed in the church to which each belongs before every diet for public worship, which occurs on that Sunday when the proclamation is made. For this purpose the registrar should transmit by post, or hand personally to address of the minister of the congregation to which each of the parties belongs, the names of the parties intending to marry; and the minister should be bound, either personally or by some officer of the church, to read the intimation of marriage before the several diets for worship. He should also intimate that any objections to the marriage will be received by the registrar.

This plan would insure the fullest publicity, as the marriage of each person would be proclaimed among their associates who knew them intimately. The various churches too would regard it as a great boon to be allowed to intimate

James Stark, Esq. M.D.

the marriage of the members of their church, and I feel assured would give all needful aid to make such a change work smoothly. No fee should be allowed to be charged for this publication of the banns in the church.

At the end of eight days from that on which the banns of marriage were suspended on the door of the registrar's office, he should be empowered to grant a certificate stating that the banns had been duly published. It should also bear whether any objections (or none) had been made to the marriage, and if objections have been offered, by whom, and of what nature. The registrar, however, should have no authority to decide as to these objections. But the officiating clergyman should be declared by the law to be sole judge of such matters.

The registrar's certificate should empower any clergyman (or the registering officer of the Quakers and Jews) to perform the marriage ceremony, provided no objections were offered, or provided that on hearing the objectors he had decided that the objections were not such as should prevent the marriage taking place.

II. *Fees for the Publication of the Banns of Marriage.*—At present the fees for the publication of the banns of marriage are different in almost every parish, and range from 5*s.* to 30*s.* In most parishes they are on a sliding scale, being cheapest if proclaimed on three consecutive Sundays, but a double fee is charged if the three proclamations are made on two Sundays, and the fee is trebled if the three are made on one Sunday. Some session clerks, however, unlawfully extort from those who can pay double the usual fee for a proclamation of banns when both parties reside in the same parish.

The civil power, when it handed over to the Church the publication of the banns of marriage, committed a great mistake in not limiting the fee, which ought to have been charged for that little burdensome duty. The present high fees for the proclamation of the banns have had the effect of repressing regular marriages among the poorer classes, and of encouraging concubinage and illegitimacy, as has been again and again shown in the registrars' notes appended to the Registrar-General's quarterly returns of the births, deaths, and marriages in Scotland. The church has never done anything to abate this crying evil, and the power ought no longer to be left in her hands.

If, however, the publication of the banns of marriage shall still be left, as at present, in the hands of the session clerks, Government should, at all events, regulate the fees which the session clerks should exact, making it *one shilling* for publishing the banns on three consecutive Sundays; *two shillings* if the three proclamations are made on two Sundays; and *three shillings* if the three proclamations shall be made on one Sunday. It ought also to be distinctly expressed that these sums are not to be exceeded although both parties reside in the same parish, seeing every proclamation of the banns must include the names of both parties.

By the proposed plan, however, constituting the Registrar of Births, Deaths, and Marriages the person who publishes the banns, the fixed fee for the publication of the banns ought to be *two shillings*, including certificate.

III. *Period of residence in Scotland previous to the publication of the banns.*—At present a person cannot have the banns of marriage proclaimed, *and of course cannot be married regularly*, unless he (or she) has resided for the six previous weeks in the parish where the banns are to be published. To a constant resident in Scotland this is no hardship; but in these days of railroads and steam navigation this absurdly long residence entails serious evils, and forces many to contract marriage irregularly, contrary to their convictions of what is proper or right, simply because the law prevents their contracting the marriage regularly, that is, by a religious ceremony.

All laws, however, should be for the encouragement of good, of morality, and of self-respect, and should discourage evil, immorality, and want of self-respect; and yet, the enforced previous residence of six weeks in some parish of Scotland, which both parties of the marriage must undergo before they can get the banns proclaimed, encourages the evil, not the good. Officers on leave from India and the colonies, officers and men in the royal or mercantile navy, colonists, and persons from abroad, or even persons from England, who cannot waste six weeks in Scotland previous to marriage, cannot marry regularly in Scotland in consequence of unnecessarily long six weeks' residence. By the present law no clergyman (under severe penalties) dare marry any parties but those who have been each proclaimed in their parish of residence, and the law is so defective that it does not even acknowledge or recognize proclamation of the banns of one of the parties in England as sufficient.

In these days of rapid locomotion and electric telegraphs, a week is equal to three or even to six months of that slow period when the Scottish law of residence was enacted. And as the object of that six weeks' residence was to insure that the persons were known to the householders who certified as to their being unmarried, and not within the forbidden degrees of consanguinity, this period of residence could be very safely reduced to *three* weeks if the Church was to retain the power to publish the banns, or to *two* weeks if that power were to be transferred to the registrar; for in the latter case *three weeks* would actually elapse before the marriage could be contracted, *i.e., two weeks* before the publication of the banns, and *one week* during which the banns were being published.

Even in the event of no change being made of the period of residence previous to the proclamation, some change must be made whereby proclamation of the banns of one of the parties in England or Ireland should be rendered legal in Scotland, and whereby a minister should be empowered to receive the certificate of the proclamation of the banns in England and in Ireland, as if it had been made in one of the parishes of Scotland.

But provision should also be made for parties getting married regularly *where only one of the parties has a residence in Scotland*, for instance, where one of the parties is a colonist, a foreigner, an officer of the army or navy, &c., whose time will not permit him to waste even three weeks in Scotland. In such a case, provided one of the parties has been residing in Scotland for the previous proposed *two weeks*, it should be lawful for the registrar to publish the banns of marriage; and it should be lawful for the clergyman on receiving the registrar's certificate that the banns have been duly proclaimed, to marry the parties. By the present law no clergyman dare marry such parties, so that every such marriage is forced to be an irregular one, which is now offensive to the parties themselves, and lowers them in the eyes of their friends and relatives. This ought not so to be.

Provided the two above suggestions were made law,—viz., that the period of residence previous to the publication of the banns by the registrar should be two weeks, and that in the event of one of the parties having no residence in Scotland, the clergyman should be allowed to marry parties when the proclamation of the banns had been duly made in the parish or district where one of the parties had resided for the two weeks,—the following very beneficial results would follow:—

By Lord Brougham's Act, 19 & 20 Vict. c. 96. no strangers can avail themselves of the Scottish marriage laws unless one of the parties has resided for 21 days in Scotland previous to contracting the marriage. Even then they can only contract marriage irregularly, that is, without any religious ceremony. But an alteration of the laws of Scotland to the above extent, would enable such a marriage to be contracted regularly; because the two weeks residence of one of the parties would enable the registrar to publish the banns for one week, and the certificate that the banns had been duly proclaimed would enable a clergyman to perform the marriage ceremony without incurring any penalty.

This is a very strong argument for making the above proposed changes in the law; whether the duty of publishing the banns shall be left with the Church, or whether it be transferred to the registrar. For the law should always encourage marriages to be contracted regularly, and rather throw obstacles in the way of contracting them irregularly.

IV. *Irregular Marriages.*—If the above suggested amendments were made on the law of marriage, irregular marriages would die a natural death, for they are not now regarded as respectable, and are only forced occasionally on the better classes by the obstacles to a regular marriage which have been above commented on, and forced on the lower classes by the present high fees for the proclamation of the banns, both of which would be removed were Government to legalize the above amendments. In that case I would not recommend that any change should be made in the law of Scotland which would affect these irregular marriages. It is far better that even an irregular marriage should occasionally occur than that the parties should live in a state of concubinage and fornication—even though now and then a case should be brought before the Courts where from the defective evidence it should not be made clearly to appear whether there was any marriage at all. The present law allows irregular marriages to be entered on the public marriage registers after certain penalties; and as both parties have an interest in their children being considered legitimate, further legislation on the subject seems to be unnecessary. Were the above amendments adopted, those at present living in a state of concubinage could at little expense be married regularly, and thus have their children legitimated.

Legitimation of children per subsequens matrimonium.—This is a politic law, which should not be meddled with in Scotland, but could be adopted with great advantage in England and in Ireland. It ought, however, to be made

James Starke, Esq., M.D.

more plain that the legitimation of the children only occurs from the date of the subsequent marriage with their mother. Thus, supposing a man had children by his legal wife, but that on her death he married a woman who had borne to him several children before his first marriage, the children of the first lawful marriage, though younger than the children of the second marriage, would take precedence as the man's lawful heirs, because the children of the woman whom he married as his second wife were not his lawful children, and consequently could not inherit his property till the date of his marriage with their mother.

Marriage with the sister of a deceased wife should be declared to be lawful, as it is neither against Scripture nor pure morality, nor against the finest feelings of the female breast.—If a family ought to consist of persons knit together by the strong bonds of love, then marriage with the sister of a deceased wife is so much more sure to produce union and love between the children of the deceased wife and those of the second wife, that on that ground alone such a marriage may be defended as the very best which a widower could make. Look abroad at families where half of the children were those of the first wife, who is dead, and half belong to the second wife, who is alive, and see what discord exists. There is, in general, no cordiality, no love, no affection, between the children of the two families. That they are of different lineage is brought prominently before them every day of their lives. The children of the deceased wife have different grand-parents, different uncles, aunts, and cousins from those of the living wife; visits to their own blood relations are discountenanced by the step-mother, while they are not received by her relations as their own kin. The natural consequence of all this is, that jealousies, strife, and discord exist where love and affection should alone be seen.

How very different matters would have been had the widower married a sister of his deceased wife. No woman can have half the love for the motherless children which one of their own blood aunts has; and then, should she have children, the whole family would have the same blood relations as the first wife's family—the same grandfathers and grandmothers, the same uncles, aunts, and cousins There would be nothing to bring to the remembrance of the first wife's children that the living wife was not their own mother, and the whole family would grow up united in love, as if they were the children of the same father and mother.

I cannot even conceive how a law permitting such marriages could do harm. As a physician, I have attended many a deathbed, and I know that the last wish of every mother was that a sister might supply her place and be a mother to her children. More than this, I have known instances where, from love to the children of her deceased sister, a woman has refused advantageous offers in order that she might act a mother's part, even though the present law kept her unmarried and liable to be thrust away should the widower marry again. I feel fully persuaded that a law to render such marriages legal would do much to increase the happiness of all those families which have the misfortune to lose their mother by death.

As to the supposed Scriptural argument which prohibits such marriages, it vanishes on being looked into. We are Christians, and not Jews, and for us the Mosaic law is as if it had never been. The New Testament allows the fullest liberty as to marriage consistent with public morality, and on the death of the one partner, allows the other to marry whom they will. But even the old Mosaic law never prohibited marrying two sisters in succession, it only forbade a man to marry two sisters during the lifetime of one another; and there can be no doubt whatever that this law was founded on the unhappy life which Jacob led with his two sister wives. The Mosaic law, however, countenanced marrying the sister or the brother of the deceased sister or brother; for in certain cases it even enjoined that the next eldest brother should marry his brother's widow, and allowed him no choice in the matter. It is folly, then, to urge any Scriptural arguments against such marriages, for the whole of Scripture rather countenances the connexion we are recommending.

The arguments used by some that the New Testament forbids such marriages, because John the Baptist said to Herod, "It is not lawful to have thy brother's wife," is silly in the extreme, and has not the most distant bearing on the case. Herod's brother Philip was still living, and the wife had not been divorced; so that Herod was living with Philip's wife in a state of adultery, not of marriage.

Suggestions for Marriage Laws for England, Scotland, and Ireland.

The Marriage Laws of England and Ireland, whatever the lawyers of those countries may assert, are confessedly a sad patch-work; and so little based on any fixed rational principle that, from the numerous exceptions to any supposed principle which they posses, it is difficult to perceive that they have any principle at all. They cannot, therefore, be too soon re-modelled; and the opportunity should be taken of reconstructing them on fixed and intelligible principles, that the Marriage Laws of the three kingdoms may closely approximate. I, therefore venture to offer a few suggestions as to how Marriage Laws applicable to every inhabitant of the three kingdoms, might be drawn up.

1. Legislate on the principle that marriage is a *civil contract*, which ought to be entered into with deliberation and publicity, as it endures for life.

2. Make one law for the whole inhabitants of the three kingdoms, and for the members of every religious denomination.

3. Make a broad distinction between the requirements of the state, and those which churches may demand of its members, the state prescribing the form in which the banns of marriage shall be published, and how the fact of the marriage shall be registered; but leaving it to the parties to solemnize or contract the marriage as they choose, according to their religious beliefs, or the demands of the religious denomination to which they belong.

4. Have the banns of every marriage published by the sub-registrar of the district in which each of the parties resides; and also in the church of which each party is a member; or if the parties belong to no particular church, then in the parish church.

5. Let no banns be published unless one of the parties has resided for the two previous weeks in the sub-district.

6. Limit the period during which the banns shall be published by the registrar to one week; and during that period let the names and residence of the parties be written on a notice hung on the outside wall or door of the sub-registrar's office or dwelling.

7. Allow no sub-registrar to publish the banns, unless the parties bring to him a certificate, signed by two church elders, that the parties (or one of them) have resided in the sub-district for 14 days, are unmarried, and are not within the prohibited degrees of consanguinity.

8. Limit the fee of the sub-registrar for the publication of the banns, including the certificate that they have been duly proclaimed, to *two shillings;* and allow no fee to be charged for the proclamation of the banns in the church.

9. When the banns have been published for eight days, bind the sub-registrar to give a certificate to the parties bearing that the banns have been duly proclaimed; stating also whether any or what objections to the marriage have been made, and by whom.

10. Empower the clergyman (or other person who performs the marriage ceremony) to decide as to the objections without appeal.

11. In the event of one of the parties residing in a district (or sub-district) of England, Scotland, or Ireland different from that of the other party, render it imperative that the banns shall be published in the place of residence of each party; but declare also that a certificate that the banns have been duly proclaimed from a registrar or sub-registrar of any one of the three kingdoms, shall be received and be valid in every other, and be received as proof that the banns have been duly proclaimed.

12. Abolish all special licences or other means whereby parties would be enabled to marry hurriedly. It is disgraceful to the laws of any country that a man should be able to get regularly married at an hour's notice to the affianced bride of another, merely because he can pay for a special licence.

13. Authorize the clergyman or minister of every religious denomination, or other person authorized to solemnize marriage, to perform the marriage ceremony over parties who present him with a certificate or certificates that each of the parties has had the banns duly proclaimed in the sub-district in which each resided.

14. To provide for colonists, officers from abroad, &c. whose time does not allow them to spend three weeks in any of the three kingdoms, authorize the above-named celebrators of marriage to perform the marriage ceremony, provided they present to him a certificate from the sub-registrar that the banns of marriage were duly published in the sub-district in which one of the parties was resident during the time prescribed by the law; and provided the other party satisfy the celebrator that he has not been residing in England, Scotland, or Ireland, that he is unmarried, and that they are not within the prohibited degrees of consanguinity, and that there is no valid objection to the marriage.

15. Declare that parents and guardians shall have no power to oppose the marriage of their children even though they are under 21 years of age, provided those children are

working for their livelihood, and are able to support themselves.

16. Impose no restrictions on the place where, or the time when a marriage may be contracted. But insist that in every case it shall be before two witnesses and the celebrator, and that the witnesses, celebrator, and parties shall affix their signatures to the schedule which shall be required by law for the registration of the marriage.

17. Parties who object to all ecclesiastical ceremonies should be allowed to contract marriage at the sub-registrar's office, after the ordinary publication of banns, the sub-registrar being authorized to be the celebrator, while Jews and Quakers should be allowed to celebrate their marriages by their own officers as at present. All other parties should be obliged to have the marriage ceremony performed by their own clergyman or minister, either in a church or out of it, as the parties may choose, or custom or taste dictate.

18. Every marriage should be registered by the sub-district registrar of births and deaths as in Scotland; where the registrar of births and deaths is also registrar of marriages, there being no sub-registrar. This registration should be on the very same plan as that found to answer so admirably in Scotland. A blank schedule containing all the queries required for registration is given to the parties who fill up the answers, when the celebrator, two witnesses, and the parties themselves append their signatures. The parties are bound under a penalty of 10*l.* to send this schedule within three days after the marriage to the registrar, where he enters all the particulars in the marriage register and preserves the original document.

19. Marriage between persons of different religious creeds should be equally valid as those between persons of the same creed, and irrespective of the person who performs the marriage ceremony. The marriage should not be invalidated, even though the celebrator may pretend to be what he is not; but in such cases the celebrator should be severely punished.

20. Every marriage should legitimize the children which may have been borne to the parties before the marriage.

21. Marriage with the sister of a deceased wife, and with the brother of a deceased husband, should be made lawful over all the three kingdoms.

Register House, Edinburgh, 7th July 1865.

No. 10.—The Venerable James Randall, M.A., Archdeacon of Berks, and Chaplain to the Bishop of Oxford.

Binfield, Berks, 17th July 1865.

The writer of this paper begs to offer the following suggestions for better securing the regularity of the contract of marriage, and preventing unlawful and clandestine marriages. His remarks apply only to England, as he has no practical acquaintance with the marriage laws of Scotland or Ireland.

Unlawful and clandestine marriages are generally contracted, as may be supposed, in places where the parties are unknown strangers. The shortness of the time required for the residence of the parties in the place where their banns are to be published, or a marriage licence obtained, gives a most mischievous facility for the contraction of such marriages.

In the case of banns to be published in church, the clergyman who is required to publish them may require seven days' notice of the names of the parties, and of their place of residence within his parish. This is not always insisted on, and may safely be waived when the clergyman is acquainted with the parties; but if a clergyman publishes the banns of strangers without notice and without inquiry, he may make himself liable to penal consequences; but supposing the notice to have been given, and the clergyman to go to the place of residence indicated, to verify the facts, the answer he would get (probably after some previous impertinence) would most likely be that the parties had taken a lodging, and that the lodging-house keeper supposed that they meant to occupy it. Then three weeks' residence, *i.e.*, from the day of the notice to the day of the last publication of banns; or, as some high authorities say, 15 days' residence, *i.e.*, from the first to the last publication of banns inclusive, is sufficient to entitle the parties to be married; and even this short period of residence may be very lax; for according to the same authorities, the words of the law, "dwell," "residence," "usual abode," "are satisfied by a "lodging taken for 15 days, in which the parties taking it "occasionally sleep and reside. I do not think they are "satisfied by the mere hiring of the lodging without *any* "residence therein. This is, I believe, the construction "which the judges are generally disposed to place upon "the statute; and not long ago the late Lord Campbell "expressed to me his opinion that this view was correct." (Extract from an opinion given by the present Queen's Advocate to some clergymen of the diocese of Gloucester and Bristol, who consulted him on the subject, dated 21st August 1861.)

But if such be the law, any attempt to insist upon residence must be altogether nugatory. Parties who wish to evade the law, always can, and always do, evade it. The questions then to be considered are, 1, Is it desirable; and 2, Is it possible to make the law more effectual?

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As to the first question, it may be observed, that besides the preservation of the first rights of parents or guardians to prevent improvident marriage of minors, the public has a great interest in preventing unlawful marriages, such as incest or polygamy, with the sad and evil consequence thereon attending; and also in checking, by the influence of the public opinion of the neighbourhood, marriages, which though not absolutely unlawful, are manifestly absurd and unbecoming. These were doubtless the objects in view of the law requiring banns. But this intention has been overridden by an extreme, and, as it appears, unreasonable apprehension of interposing unnecessary hindrance or delay in the way of marriage. There is little ground for such apprehension; nor can there be any good reason for huddling marriages up in haste and secrecy. Among people of respectable condition and conduct, whether rich or poor, it is generally known long enough beforehand, that such or such a couple are going to be married; they have to provide a house, and settle a plan of life. People do not usually declare for the first time their mutual affection for each other, and settle all the necessary preliminaries for their marriage, on the first day of their meeting as strangers in a strange place. So let them declare their intentions in the place which has been hitherto, even if they design it to be no longer, their habitual domicile.

Next, as to the possibility of making the law more effectual, the following suggestions are offered:—

Let four weeks be the term of residence, after which a party shall be entitled to have his banns published in the parish (or union, if he intends to be married by or under the authority of the registrar) where he dwells. The residence need not *then* be very strict. If during the whole time he had a house or lodging, though he left it occasionally, if it was *animo revertendi*, that should be no breach of the residence. But with that latitude, the clergyman (or registrar) ought to take reasonable care to inform himself that the residence had not been fictitious, of which, however, under such circumstances, the danger would be but little in comparison of what it is at present. Then let notice be given, and the banns published as now. If the four weeks' domicile of the parties has been in different parishes (or unions), the banns should be published in both as now. If after notice given, but before, or during, or after the publication of banns, the parties, or either of them, shall remove from the parish (or union) where the notice was given, and go to reside elsewhere, the publication of banns might nevertheless be made where the notice was given, and the parties might be married there, or in any other parish (or union) to which they had since gone to reside upon production to the clergyman (or registrar) of such other parish (or union) of a certificate from the clergyman (or registrar) of their former parish (or union) of the publication of their banns; such certificate being produced 10 days before the marriage is required to be celebrated, that there may be sufficient time to verify the certificate. This plan would not be acceptable to parties who wish to smuggle a marriage unknown to anybody; but some such provisions seem necessary, if banns are to be of any avail at all.

Parties intending marriage in a church should make the same declaration as to age, absence of impediment, &c., as is required by 19 & 20 Vict. c. 119. s. 2., in case of notice of marriage before the registrar, *mutatis mutandis*. Such declaration to be made before the clergyman, or some person appointed by him to receive it.

In parishes of moderate population the clergyman might without inconvenience receive those declarations himself, and it would be desirable that he should do so: but in large town parishes it might be inconvenient, for which reason it is above proposed that a substitute should be allowed.

The declaration ought to be made not by one only, but by *both* the parties, and they should make it separately, *not* in each other's presence. A profligate man or woman, who wished to contract an unlawful marriage, or to marry a minor without consent, might not mind making a false declaration for the purpose, at which, nevertheless the innocent but deluded party might pause. If the parties live in different parishes (or unions), each might make the declaration before his or her proper clergyman (or registrar). The declaration should be carefully read over and explained by the clergyman (or registrar) to the party making it. Clergymen and registrars should be made to understand that this is a material duty; and the registrar general should understand that it is his duty to take serious notice of any misconduct of a registrar, or any neglect through which a clandestine or unlawful marriage may have been contracted

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under his authority. On the other hand, clergymen and registrars ought to have (if they have not already) the same protection as magistrates and other public officers have against actions brought against them for acts done in the execution of their office, and not held liable for any damages for withholding publication of banns, &c., unless malice or corrupt motives are proved against them.

Banns published by registrars ought not to authorize marriage in church, nor *vice versâ*. Wherever the proceedings begin they ought to be terminated. The contrary practice weakens responsibility, and also creates disagreements and conflicts of authority between clergymen and registrars, which ought to be avoided.

The writer is not aware of any law which requires the publication of banns in churches to be on three *successive* Sundays, though the practice is and ought to be so. Perhaps it would be well to enact that it should be so, or, to make allowance for accidental omission, that the three publications should take place within the space of one month. The statute 6 & 7 Will. 4. c. 85. s. 6. required publication at boards of guardians to be in successive weeks.

The publication of banns at the board of guardians was not of much avail for the purpose of notoriety. The present mode of hanging up a notice in the registrar's office is still less effectual; it amounts almost to an acknowledgment that the Legislature gives up the attempt to publish them at all anywhere but in church. It is indeed difficult to invent any process by which the registrar could make an effectual publication. Possibly some security might be obtained by requiring the testimony of witnesses to the facts alleged, as was formerly done by the 103rd canon. This would in some degree supply the want of that notoriety of the intention of marriage which banns are intended to secure. But let it be repeated that clergymen and registrars ought to be instructed that it is their duty to deal judicially with the whole matter of each case, and not to think that they are merely ministerial agents bound, or even at liberty, to receive and publish without responsibility any names that are proposed to them for banns.

It would be well to extend the time of residence required before *application for a licence* to four weeks, as in the case of banns. The residence, as in the case of banns, should be construed with reasonable liberality. But in both cases, as defects of form are considered to be *impedimenta impedientia, non dirimentia* (and sad consequences would ensue if it were otherwise), there ought to be more precaution taken than is now possible to prevent parties from leaping over the *impedimenta impedientia*, which are founded in good sense, and the disregard of which is a great evil, though not *so* great as would be the consequent nullification of a marriage after celebration and consummation.

A party ought always to be at liberty to describe himself as resident in the place of his habitual domicile, though he may have been absent from it for part of, or even all, the time required for residence before application for banns or licence, if his absence was only occasional, and *cum animo revertendi*. The writer understands such to be the law at present, and he only mentions it to show that in requiring occasional residence to be strict, he does not mean to insist upon strict residence in the habitual domicile.

It should be distinctly understood (if it is not so already), that the registrar is not authorized or allowed to use any religious ceremony in celebrating marriage. He can only receive the declarations of the parties as appointed by the 6 & 7 W. 4. c. 85. This is mentioned, because at one time some registrars did take upon them to use a religious ceremony. Perhaps it might be well to direct that the registrar, having received the declarations, should say, "I "pronounce that A. B. and C. D., having made the declarations required by law in that behalf, are joined in marriage, and are henceforth man and wife;" or other words to that effect. This, of course, only applies to cases where the marriage takes place in the registrar's office; not to cases where the registrar only attends as an official witness to a marriage celebrated in a dissenting place of worship.

It would be very desirable that the Commissioners should recommend some uniform scale of fees for the performance of all offices relating to marriage; receiving declarations of intention; publishing banns; administering oaths or declarations; granting licences; performing ceremony by clergymen (or in the case of registrars, doing what is in law equivalent thereto), &c. There is a considerable difference between the practices and customs of different parishes, even in the same neighbourhood, as to this, and a good deal of dissatisfaction naturally arises therefrom. The clergy generally would be very glad of a statutory regulation in the matter. And the rule ought to be the same for clergy and for registrars. There should be no *pecuniary* reason for preferring one place, or one mode of celebrating marriage to another. It must be supposed that people who can afford it will make presents upon such occasions; and it is quite right that they should do so if they please; but the demandable fee should be of an ascertained amount.

Some difficulties might arise from the requirement of four weeks' residence before notice of intended marriage can be given. For instance, if a person having resided four weeks in parish A., should quit that parish without having given notice (perhaps not at that time intending marriage), and should go to live in parish B., he would not then be entitled to give the notice in either parish till he had completed a fresh four weeks' residence. This might be obviated by providing that in such a case the notice might be given, and banns published in A., if not more than (say eight) weeks had elapsed since his residence there. Also, there might be cases of soldiers, sailors, or other persons lately returned from abroad, and desirous of being married without delay, that they might go abroad again. But if the principle of the four weeks' residence were admitted, it would probably not be very difficult to provide for such exceptional cases.

No. 11.—JOHN SHEPHARD, Esq., Registrar of the Arches Court of Canterbury.

Bishop of London's Registry,
3, Godliman Street, Doctors' Commons,
18th July 1865.

MY LORD,

I HAVE the honour of your Lordship's letter of the 8th of June, requiring me to furnish the Commissioners appointed by Her Majesty "To inquire into the state and "operation of the various laws now in force with respect "to the constitution and proof of the contract of marriage, "and the registration and other means of preserving evi-"dence thereof," with any observations or suggestions which might occur upon consideration of the whole subject.

As I am best acquainted with the practical operation of the present law in the diocese of London, my observations will be chiefly confined thereto, and to marriages solemnized under the 4 Geo. 4. c. 76.

I apprehend the leading objects of all marriage laws are to afford all reasonable facilities, subject to due precautions against clandestine marriages.

With these principles in view, it appears to me that some further precautions are advisable previous to the publication of banns, as the Act (4 Geo. 4. c. 76.), as at present carried out, affords little or no security against clandestine marriages.

It is notorious that the provisions of the seventh section of the Act are in many parishes rarely if ever complied with, and that there are repeated instances of banns being published of the names of parties, neither of whom have ever resided in the parish where the marriage subsequently takes place.

It is suggested that this evasion of the Act might to a certain extent be remedied if one of the parties to be married were required (previous to any publication of the banns) to appear and make a declaration in writing before the incumbent or curate of the parish or district, in verification of the notice required by the Act.

The full inquiries made when a licence is applied for, and one of the contracting parties having to appear personally and be sworn to the truth of the facts as to age, residence, consent, &c., as specified in the affidavit, previous to the grant of a licence, afford a much greater protection against clandestine or fraudulent marriages, and it seems worthy of consideration whether it would not be desirable to exempt the affidavit and licence from the present stamp duties (amounting together to 12*s.* 6*d.*), or at least to reduce the same, so as to make them more easy of attainment to all classes.

I would also propose to give parties the option of marrying either in the church of the mother parish or in the church of the parish or district constituted under the Church Building Acts within which they or one of them resides, as they might desire.

As parties are frequently subjected to inconvenience by the length of residence required by the Act, previous to the affidavit being made, it would be for the Commissioners to consider whether seven or 10 days' residence would not be sufficient.

I would further suggest the amendment of the 17th section by authorizing the mother to give consent in cases where the father of the minor is *non compos*, in lieu of subjecting parties to the expense and delay of applying to a Court of Equity.

The provisions made in the 6 & 7 Will. 4. cc. 85. and 86. appear to me to afford all the requisite legal proof of the contract and sufficient means of preserving evidence thereof.

I have the honour to be, &c.

No. 12.—The Right Rev. Michael O'Hea, D.D., Roman Catholic Bishop.

Skibbereen, 18th July 1865.

My Lord Chelmsford,

Absence from home and some urgent duties have prevented an earlier reply from me to your communication of May last.

Any inquiry into the marriage laws as they exist in Ireland and in Great Britain by the Commission issued by Her Majesty cannot but command the serious attention of the Catholic hierarchy of this country, and be of deep interest to them. The morality and social happiness of the flocks committed to them must be closely mixed up with it. As long as the regulations which may be the result of that inquiry clash not with the laws of the Catholic Church, the Commissioners may fully calculate on the co-operation of the Catholic bishops. What those laws are may be learnt from the teaching of the Fathers of the Council of Trent, and from the practice of the universal Church. In all countries where they have been in existence, they have proved the safeguards of morality and the best security of the sacredness of marriage and of the indissolubility of its tie. Experience tells us that any departure from them has been ever attended with serious evils to society, and with much unhappiness to the domestic hearth. Hence we deplore bitterly the facility afforded by the Divorce Courts in Great Britain to the dissolution of the marriage tie; and while we do rejoice that the Act of the Legislature on that subject has not been extended to Ireland, we cannot but be greatly apprehensive that its demoralizing influence may not yet be felt among our flocks. We should deplore it the more, as any enactment of the kind for Ireland would necessarily place us in collision with the authority of the State and its decisions. We do, therefore, beg that in their recommendations to Her Majesty the Commissioners will take into their consideration the faith of Her Majesty's loyal Catholic subjects, and respect their religious adherence to those decrees which, under the light of the Gospel, the guidance of the Holy Spirit, and the experience of ages have emanated from the venerable and learned Fathers of the Council of Trent.

Human legislators may wish to distinguish the secular from the religious contract of marriage. The law of God recognizes no such distinction. The Church reprobates it. Yet, we are ready to afford every assistance in our power to have those secular results secured, at which the State so solicitously aims. Hence, when the marriage of the children of the Catholic Church has been duly solemnized before the lawful priest and the required witnesses, the entry of such marriage is made in the parish registry, and this parish registry, committed to the care of the parish priest, is carefully kept by him, and from time to time minutely inspected by his bishop. This registry, which is ever ready to be produced, cannot fail, with the enactment lately made for the correct registration of marriages in Ireland, to afford proof convincing of the celebration of any marriage which takes place in any parish of the diocese.

In troublous times such registries of marriage could not have been safely preserved; but for many years Catholic bishops have instructed their clergy to look closely to the accurate registration of marriages performed by them, and carefully to preserve such important documents.

In the diocese of Ross every co-operation has been given by the Catholic clergy to the registrar appointed by law, and as far as the practical working of it is to be considered the Act cannot fail to have the desired result.

I beg to be allowed on this occasion to direct the attention of the Commissioners to two great difficulties which press rather hard on the liberty of the Catholic priest and on the exercise of his spiritual jurisdiction. The first difficulty refers to mixed marriages, that is, of a Catholic and of a party belonging to any of the Protestant denominations. Although the Catholic Church has ever proved herself averse to such mixed marriages, circumstances often turn up which induce her to give her sanction to such marriages. The law of England deprives the Catholic priest of jurisdiction in any such case, declares such a marriage invalid, and pronounces the act of the priest a punishable one. The other difficulty refers to two Catholic parties, one or both of which may not have professed only for some months previous to their marriage the Catholic faith. Again, their marriage by the Catholic priest is declared invalid, and the act of the priest who solemnizes the marriage is also made punishable. Such harsh enactments as long as they have force must be an obstacle, and the only one which for the present I can see, to that useful and happy co-operation which the State can expect from the Catholic clergy. Let such enactments, which have had their origin in troublous and penal times, be expunged from the Statute Book and all will be harmony

I have the honour to be, &c.

No. 13.—The Right Rev. Dominick O'Brien, D.D., Roman Catholic Bishop. Bishop O'Brien.

My Lord, Waterford, 25th July 1865.

In reply to the communication with which you honoured me on the part of the Royal Commissioners, I beg to make the following statements.

The Council of Trent has settled the question of the validity of Christian marriages over 300 years ago. That great Council, sess. xxiv., cap. 1, De Reform. Matrim., declares null and void all marriages not contracted in the presence of the parish priest, or of a priest with his permission, or that of the ordinary, and two or three witnesses. This decree, together with the interpretations given by the Roman congregations, is the only legislation concerning the validity of Christian marriages which I acknowledge, and if the British Legislature would adopt it, at least for Irish Catholic marriages, it would be a great blessing.

With regard to the registration of marriages, I am of opinion that the present law, if properly carried out, ought to be quite sufficient for all purposes of the Government.

There is great reason to complain of the law which annuls the marriage of a Catholic and a Protestant performed by a Catholic priest. It is not only a great inconvenience, but a great hardship and a remnant of the persecution of former days, and ought to be forthwith abrogated. Another great inconvenience to which we are subject is that a Protestant, who becomes a Catholic, and wishes to marry a Catholic, cannot be validly married by a Catholic priest unless he be 12 months a Catholic. This is a grievance that ought to be removed.

The Commissioners ask my opinion on the constitution of the marriage contract (religious and secular), and in reply I can only refer them to the Council of Trent, unless they wish me to write a treatise on the subject, which would occupy too much of their time and my own. Moreover I do not know any such thing as a merely secular marriage amongst baptized Christians. There are civil effects of marriage on which alone the secular power can legislate.

The last observation I have to make is, that the law of divorce as it exists in England is a disgrace to Christianity, which I hope will never be extended to Ireland.

I have the honour to be, &c.

No. 14.—The Most Rev. Patrick Leahy, D.D., Roman Catholic Archbishop. Archbishop Leahy.

My Lord, Thurles, 25th July 1865.

In reply to the circular letter which I have had the honour of receiving from your Lordship I beg to submit the following statement of my views in reference to the laws affecting marriage in these countries, and the particular points on which your Lordship desires information.

1. Since Ireland is a Catholic country, and an integral portion of the British Empire, where every person of whatever religious denomination can claim freedom of conscience as his birthright, the Catholics of Ireland are entitled to profess the doctrine and to uphold the discipline of their Church in reference to marriage, which is esteemed by them not only a holy thing but also a Sacrament of their Church. They could not therefore regard otherwise than as an unconstitutional interference with their religious liberty, and consequently a grievance, any legislation which would affect the validity or sacredness of marriage as solemnized in their church, or which would in anywise restrict the freedom with which marriage has been hitherto celebrated between Catholics according to the ordinances of their religion.

2. Any such legislation in reference to Catholic marriages, so far from being necessary, might prove mischievous in the extreme. Reverence for marriage and the married state is essential to the happiness of individuals and the well-being of families, the good of society, and the purity of public morals; for, where it is wanting, individuals, family society, public morals, all are sure to become deteriorated, and deteriorated in proportion as it is wanting. In no country in the world is marriage held in greater reverence than in Ireland,—in but few is it held in equal reverence. No legislation could add to this regard for the sanctity of marriage or exalt the tone of morality which happily distinguishes the Irish people. On the contrary, legislation might weaken this high moral feeling unless it harmonized with the teaching and discipline of the Catholic Church, and therefore might prove extremely mischievous. Any attempt to legalize marriages which according to the ordinances of the Catholic Church are null and void, besides being mischievous in a high degree, would be altogether unworthy of a Protestant, not to say a mixed legislature, if it only set any value upon the individual and social happiness of the Catholics of this realm. Hence the evil of any attempt to introduce into Ireland the *legal contract of marriage*, as it is called, that is marriage contracted before a civil officer without the intervention of a clergyman.

3. The doctrine and discipline of the Catholic Church in respect to the validity of Catholic marriages are set out in

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clear terms by the Council of Trent, sess. XXIV., cap. 1, De Reform. Matrim., where the Council declares null and void the marriage of any persons "who shall attempt to "contract marriage otherwise than in presence of the parish "priest, or a priest having his or the ordinary's licence." This decree of the Council of Trent it is that determines the validity or nullity of marriages celebrated between two Catholics, and the British Legislature would do well to adopt it as the legal form for the celebration of marriages where both parties are Catholic.

4. With respect to the constitution of the marriage contract, upon which I am invited to give my opinion, I hold that in Christian marriage there is but one contract, having both a secular and religious aspect, that such contract is inseparable from the Sacrament, and that the civil power cannot by any force of law sever the one from the other, although it is competent to legislate upon the civil effects of marriage. The attempt on the part of the secular power to separate the contract from the Sacrament of marriage, whenever and wherever made, has resulted in unhappy conflicts between the secular and the ecclesiastical authorities, which every one interested in the preservation of good order would deprecate, which every friend of public morality would dread as an evil. Indeed every interest involved, public and private, would demand, does demand, that in this grave matter the secular and the ecclesiastical authorities should act in harmony each with the other.

This separation, or attempt at separation, besides introducing open antagonism between Church and State, is fraught with multiplied evils; to mention some of them, though the merely civil contract be legalized, such a marriage, contracted as it is in open defiance of the Church's ordinances, is in the eyes of the Catholic Church simply a legal concubinage, and the children born of it are illegitimate.

Moreover, the merely civil contract, being from its nature dissoluble, (whereas marriage duly solemnized according to the laws of the Catholic Church is indissoluble *quoad vinculum*), the merely civil contract, I say, as being dissoluble, leads straightway to conjugal infelicity, and infidelity, and ultimately to divorce with its consequent evils, as is abundantly proved by experience wherever the civil contract has been introduced.

Contracted too, as the civil marriage is, not only without the forms of religion, but in contempt of religion, and by irreligious persons, it is calculated to loosen the great bond of the family and of society which is religion, to weaken domestic and social virtue, and to introduce a widespread depravation of morals. Warned by the example of other countries, which have tried the unhappy experiment of the civil contract, the Legislature of this country ought to dread as a great evil an institution which has proved to be a prolific source of unhappiness to the individual, to the family, and to society at large.

5. Legislation is absolutely necessary in reference to mixed marriages celebrated by a Catholic priest. The marriage of a Protestant and Catholic, or of two Catholics, one of whom has been a Protestant within twelve months, if celebrated by a Catholic priest, is by law null and void, and the priest is subject to a penalty for celebrating it. The law as it stands is unjust in principle, mischievous in operation, a remnant of penal legislation which ought to be at once and for ever expunged from the statutes of this realm.

6. The law recently passed for the registration of marriages* is working satisfactorily in those parts of the country with which I happen to be acquainted. I have instructed my own clergy to co-operate in giving it practical effect, and I have reason to know that they do so. That law, together with the accurate registers kept by every parish priest for his own parish, as prescribed by the Council of Trent, and made imperative also by our national, provincial, and diocesan statutes, will for all purposes afford abundant evidence of our Catholic marriages. The decree of the Council of Trent runs thus, "Let every parish priest have "a book in which he shall write out the names of the "married couple, and of the witnesses, and the day on "which and the place where the marriage was contracted, "and let him carefully keep the book in his own custody."† The decree of the Council of Trent, prescribing that every parish priest shall keep such a register is enforced in the diocese of Cashel by a diocesan and provincial statute imposing the grave penalty of suspension upon the priest who neglects this duty, and requiring furthermore that the register shall be produced to the Bishop at the visitation of the parish.

7. It is the doctrine of the Catholic Church that, although for certain good causes a husband and wife may be separated *quoad torum et cohabitationem*, marriage once consummated is indissoluble *quoad vinculum*. The law of divorce which obtains in England is directly at issue with this doctrine, and its extension to Ireland, besides subverting morality, would be attended with the greatest confusion. Its application to Ireland would be a curse, its abolition in England a blessing.

I have the honour to be, &c.

* The Statutes of 1863.
† Sess. XXIV., cap. 1, De Reform. Matrim.

No. 15.—The Right Rev. William Delaney, D.D., Roman Catholic Bishop.

My Lord, Cork, 5th August 1865.

I had the honour of receiving a communication from your Lordship, now too long a time past, inquiring as to the operation of marriage laws and their registration.

Until the document reached me through the post, I had never heard of the constitution of the Commission; and although the subject was very fully and clearly expressed, yet, coming suddenly before me, I was anxious to learn whether any definite projects were under consideration. On this account I delayed my reply for a while, when an unusually severe and continued pressure of business caused me to forget it entirely until a late occasion.

Your Lordship will kindly accept this explanation as an apology for my seeming inattention.

As far as I can learn, in those places with which I am best acquainted, the registration law operates with most satisfactory results. All our clergymen take care that parties contracting marriage give the required notice to the legal officer. We have had previously our own registries, according to the discipline of our Church; these we still continue, and the bishops inspect them at stated times. Alone, I think, they would now suffice, as evidence of the marriage contract between Catholics. With the legal registration they seem superabundant.

There is an existing law regarding the marriage of a Catholic with a convert which to state is to reprobate. It was once repealed, at least as to the penalties, by the Legislature, but subsequently strangely, if not unintentionally, renewed.

If a Catholic priest solemnize a marriage between one of his own flock with a convert who has not been a Catholic for an entire year previously, he is liable to a felon's doom.

Now, we cannot receive into the Roman Catholic Church any one whatever who does not afford sufficient evidence of sincerity. We have to administer sacred rites to them, which we believe it sacrilege to profane, and cannot give them to the ill-disposed or the insincere. When the upright join us, they have a right to demand our ministration. Yet, if we comply in such cases, it may be attended with the severest penalty.

Even-handed justice should, in our judgment, be extended to all classes by the Legislature, and we can discover no real cause why Catholics should not be on the same footing with regard to marriage as their fellow subjects of other denominations.

I need not remind your Lordship that, according to the discipline of the Roman Catholic Church, there are various impediments which make void the marriage contract amongst the nations that are of our faith, the operation of this discipline is provided for by law. Legislation in our country has been different. Yet it would seem worthy of enlightened and benevolent rulers to enact nothing on the subject expressly in direct opposition to our religious usages.

Persecution has just disappeared and proselytism by undue means is now generally repudiated. Neither could ordinarily suffice to make disobedient members of our Church leave her communion although they may feel encouraged by law to violate her discipline. Still professing themselves Catholics, they would continue to live in unhappiness with one another, and on such terms with their neighbours and co-religionists as are little conducive to social peace. The state of their own feelings engenders a recklessness of mind adverse to all the best interests of life, as far as they themselves are concerned, and they become mischievous instead of useful members of the great community at large.

These trite observations may be little pertinent to the scope of the inquiry. Had I known more distinctly any points the Commissioners wished to have elucidated, I would have been most happy to afford any information in my power.

I have the honour to be, &c.

No. 16.—Observations on the Marriage and Registration Acts as they affect persons professing the Jewish Religion, and Suggestions for their Amendment. By Mr. Alderman Salomons, M.P.

1. The Marriage and Registration Acts, as they affect the Jews, seem to me to require some alteration. By their operation the registration of the secretaries of synagogues is encumbered with unnecessary formalities, and the element of thorough religious liberty, granted to all other dissenting bodies, is in the case of the Jews but imperfectly secured.

2. These Acts present, for persons professing the Jewish religion, a complicated system, alike wanting in the simplicity of a mere civil registration, as enacted for other dissenting bodies, or as affording the solid advantage of that double character of registrar and minister, which the clergyman exercises in all the marriages of churchmen.

3. The Marriage and Registration Acts were intended to afford *civil* registration of every marriage, leaving it to the parties themselves to marry according to their own religious views, without any heed or interference by the State in what may be properly considered as the spiritual element.

4. This principle is abandoned in the case of the Jews, for they, in compliance with these Acts, are required to marry according to their "usages." Marriages so celebrated are to be certified by the secretary of a synagogue, who is to be present at marriages "of persons professing the Jewish religion," and in effect he certifies to their "rites and ceremonies."

5. We here see that Parliament has deviated from the strict principle of civil registration, and has undertaken that in the marriage of Jews, the registrar, who is to be "the secretary of a synagogue," shall superintend and certify such marriages, he being the agent of the State for that purpose, *certifying religious usages, and also rites and ceremonies.* (6 & 7 Will. 4. cap. 86. clause 31. schedule C.)

6. It was the avowed object of Parliament to extend to all religious denominations in Her Majesty's dominions the inestimable privilege of registration of their marriages without interference as to matters of faith. But, as regards the Jews, the position assumed by the State has been of such a mixed character that it enabled the appointment of the registrar secretary to be so managed as to become an especial element of religious discipline. In fact the Acts have been so administered as to make the adhesion of synagogues to an *orthodox* Jewish *ecclesiastical standard* the very *substance* and *condition* of registration.

7. By such means the religious independence which the Legislature proposed conferring on congregations of every denomination of religious worshippers in the United Kingdom in the celebration of their marriages has hardly been extended to the marriages of Jews.

8. This is brought about by the course prescribed in 6 & 7 Will. 4. c. 86. s. 30., as preliminary to the appointment of the registering secretary. By it Parliament has conferred a power which has been so applied, or rather, it may be, as I think, misapplied, not for testing the respectability of the secretary, or of his due election by his congregation, but for judging of the orthodoxy of the worshippers that have made him their secretary, and have put him forward to be certified as such to the Registrar-General.

9. This manifest violation of the true spirit of these Acts for the purpose of enforcing religious conformity, and of establishing ecclesiastical supremacy over Jewish congregations, by the assumed authority of Parliament, has been productive of great bitterness, which, after years of contention, is hardly yet allayed. A somewhat awkward attempt at a remedy has been since made in the 19 & 20 Vict. c. 119; but it neither sets free Jewish congregations, nor does it relieve the State from being a party in their religious disputes.

10. Apparently nothing seems easier than complying with the plain words of the Registration Act, and certifying of an appointed secretary of a congregation of persons professing the Jewish religion that *he is* the secretary of that synagogue. *That*, in reason, would seem to be a true compliance with the directions of the Legislature. Nothing more can be required according to the plain reading, the evident meaning, and the true spirit of the Marriage and Registration Acts.

11. But ingenuity is seldom at fault when spiritual authority is to be exerted. So when the secretary of a synagogue is presented by a congregation of persons professing the Jewish religion to be certified as such, the question mooted is not, Is he the secretary? but Are they a conforming congregation? Are they an orthodox synagogue? Registration has in this manner been raised into an element of religious discipline, and of sustaining Jewish ecclesiastical authority by the assumed power and action of Parliament; and according as a congregation of worshippers have conformed strictly to the Rabbinical rule, or deviated therefrom, so have secretaries of synagogues been accepted or repudiated.

12. Some modification of this extraordinary position has been attempted in the Marriage and Registration Acts Amendment Act (19 & 20 Vict. c. 119). By section 22 of that Act, Parliament for the first time recognises the existence of a congregation of "British Jews," who may exercise the privilege of certifying a secretary of a synagogue similar to that enacted for "persons professing the Jewish religion," by the 7 & 8 Will. 4. c. 86.; but it has not relieved the Legislature from the inconsistency of interfering in these internal dissensions that concern only the Jews themselves. Nor has it given complete and thorough independence to the several synagogues of the United Kingdom. At the present time a congregation of nearly 400 members, belonging to a synagogue recently erected at Bayswater, has had its secretary refused, on some technical point, not in this instance affecting the religious conformity of the worshippers, but on grounds, if possible, more untenable and unjustifiable.

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13. For these anomalies a remedy can be conveniently applied, not in hostility to Jewish congregations, but in freeing them from interference by the State in their internal affairs. It is the duty of the State to administer civil affairs, but it should be thoroughly neutral in all religious matters, whether they concern Jewish congregations or the regulations of other denominations.

14. The remedy I shall venture to propose is one that ought to be readily welcomed by Jewish congregations. Jews' synagogues are generally registered like other places of religious worship. Each one so registered should have the right of having the secretary of the congregation appointed registrar of marriages for that synagogue on the signature of the warden or wardens, or of five or ten of the regular worshippers, declared to that effect before a justice of the peace.

15. This would give a simple and direct mode of registering the secretary of a synagogue. It would afford to congregations the independent position they ought to hold as between the State and themselves. It would avoid the question of religion, whether founded on difference of doctrine or discipline, a matter in which the public could have no concern. It would free the State from the singular position it is now made to hold on the appointment of a registrar, whether presented by orthodox or by dissenting Jewish congregations. It would afford to synagogues a suitable and unobjectionable remedy for that which hitherto has fostered strife, contention, and heart-burning, without one single countervailing advantage.

16. By the proposed change the Jews would have the secretaries of their synagogues registered by the unfettered action of the congregations. By it the Jews would secure whatever convenience they now enjoy in the celebration of their marriages, together with the thorough religious independence accorded by Parliament to all other denominations.

London, July 31, 1865.

No. 17.—The Right Rev. JOHN MACEVILLY, D.D., Roman Catholic Bishop in Ireland.

Bishop MacEvilly.

MY LORD, Galway, 16th August 1865.

I HAVE the honour to acknowledge the receipt of your Lordship's letter, bearing date 25th May 1865, having reference to a Royal Commission issued "for the purpose "of inquiring into and reporting upon the state and opera- "tion of the various laws now in force in the different parts "of the United Kingdom with respect to the constitution "and proof of the contract of marriage, and the registration "and other means of preserving evidence thereof," and also desiring me to forward to your Lordship such observations and suggestions as may occur to me upon consideration of the whole subject, but more especially upon the practical operation of the present law on the subject.

In reply, I beg leave to state that, having maturely considered the subject of the proofs, registration, and preservation of evidence regarding marriages as celebrated in the Catholic Church in this country, I am decidedly of opinion that the provisions contained in "Mr. Monsell's Act," now in operation, and operating, as far as I know, satisfactorily, together with our statutes framed in accordance with the decree of the Council of Trent, on the subject of the registration of marriage, strictly carried out by us, afford all the guarantees and securities that could be reasonably desired on this subject.

The only points that occur to me as deserving of any special "observation" are—

1st. That the present state of the law relating to the marriages of Catholics and Protestants, including the case of such Protestants as are not converted for fully twelve months, is exceedingly oppressive and unsatisfactory. The penalties and civil disabilities it entails place unnecessary restraints on men's consciences, and, as regards Catholics, have only the effect of painfully reminding them of the inequality before the law, from which they suffer on a subject deeply affecting the well-being of religion and civil society.

2ndly. I would deprecate in the strongest terms the extension to this country of the law of divorce already in force in England, and but indirectly affecting us. The operation of this law I should regard, in case of the marriage of Christians once consummated, apart altogether from its influence on morality and civil society, as a contravention, on a large scale, of the unchangeable ordinance of our

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Divine Redeemer, "What, therefore, God hath joined together, let no man put asunder."

If I were permitted to make any "suggestion," as I am invited to do by your Lordship, it would be, that a proper remedy be applied to the law relating to *mixed* marriages, already referred to, by rendering them valid before the law, as they are before the Church, and that the penalties affecting their celebration be abolished.

I would beg furthermore to add, that this desirable object could be the more easily attained, were your Lordship kindly to exert in this matter that powerful influence which your exalted station, no less than your personal distinguished merits, have earned for you.

I have, &c.

The Vicar Apostolic of Western Scotland.

No. 18.—The Right Rev. JOHN MURDOCH, Vicar Apostolic of Western Scotland.

MY LORD, Glasgow, 17th August 1865.

I BEG leave to apologize to your Lordship and the other Commissioners for delaying so long to acknowledge receipt of your communication of May the 20th. Two rather protracted absences from home, the one immediately following the other, after it reached me, has prevented me from directing my attention to the subject to which it referred.

In now considering that subject, I confess I feel somewhat at a loss, as it is one of rather a comprehensive description, to decide on the manner and extent in which I ought to view it. In courtesy, however, to your Lordship and your brother Commissioners, I consider myself called upon to offer at least some few observations. I of course take it for granted that your Lordship has a full knowledge of the law of marriage in this country.

There are few countries in Europe in which the facilities for validly contracting marriage are greater, or perhaps so great. These facilities, no doubt, occasionally produce difficulties; but in general they contribute greatly to the ease with which doubts can be solved, in so far as there is question of validity or invalidity. In so far as Roman Catholics are concerned, as the decree of the Tridentine General Council against clandestinity was never received in Scotland, and in consequence does not bind, I never hesitate to decide all clandestine marriages to be valid and indissoluble. At the same time all Roman Catholics are taught to look upon them as sinful, and therefore unlawful, because contracted and entered into not according to the rites of the Catholic Church, nor in the presence of the ordinary minister of the Church. But I can never doubt as to the validity of such marriages if unaccompanied by any other impediment recognized by the discipline of the Catholic Church. If such marriages be accompanied by any such impediment—and it is well known that the Catholic Church interposes more impediments to marriage than does the Protestant Church—then and in that case I hold them to be invalid, and require the parties, after obtaining a dispensation, if obtainable from the impediment, to get themselves united according to the rites of the Church, and so validate their marriage.

According to the law of the land, two persons entering into the wedded state must be thrice proclaimed in the Established Church, and obtain, in addition to the schedule given to them by the parish registrar to be filled up, a certificate from an official, styled here the session clerk, testifying that no objection has been offered. They are then united by a clergyman, generally by the clergyman of the religious denomination to which they belong, who of course fills up the portion of the registrar's paper assigned to him. The law, when marriages are regular, works, I think, well and effectually. I can see no objection to its operation, especially as it treats all denominations equally. Permit me, however, to remark that I consider the proclamation fees—they are not the same everywhere, here in Glasgow they amount to 8*s.* or 8*s.* 6*d.*—much too high, in as far, at any rate, as the poor are in question. Their amount among the latter is not unfrequently the cause of concubinage. Again and again I have on inquiry found that parties cohabited together unmarried, because unable to muster up as much money as is demanded, and rigourously demanded, by the session clerk, in payment of the proclamation fees. This matter ought, assuredly, to be looked into and remedied. Indeed, in my opinion, proclamation of banns in the Established Church ought to be abolished, except when the parties about to be married belong to the establishment, as utterly useless. In the case of Roman Catholics, at any rate, it is altogether inoperative in the way of discovering objections. During an experience of over forty years, I do not recollect of even one solitary instance of the discovery of an impediment to an intended marriage made by the calling of the banns in the Established Church, while discoveries have again and again resulted from the simultaneous publication in Roman Catholic churches and chapels.

In respect of the proofs of marriage, I should imag that the strict enforcement of the rules laid down for registration must render these proofs both easy and sure.

As to the various modes in which *irregular* marriages are legally contracted in this country, I have only to say that, by the Roman Catholic Church at least, they are strongly condemned as productive of great moral evils, and especially of frequent separations of man and wife, but too often followed by second adulterous unions. The portion of the ill-instructed and ignorant Roman Catholics incapable of distinguishing between the *illicitness* and the *invalidity* of irregular marriages can scarcely be convinced that such marriages are real and binding, and hence instances of bigamy occur.

I must request your Lordship and your hon. colleagues in the commission to excuse the brevity and imperfections of the above remarks.

I have the honour, &c.

No. 19.—The Very Rev. Dr. HOOK, Dean of Chichester.

The Deanery, Chichester,

MY LORD, 18th August 1865.

IN answer to a letter I have had the honour to receive from your Lordship, in which you desire me to state any opinions which, from my long experience as a parish priest, I may have formed on the existing state of the marriage law; and requiring me to mention any improvements in that law which may have suggested themselves to my mind; I have no hesitation in saying that I think it will be conducive to the cause of true religion and virtue if it shall be decided that marriage shall henceforth be treated by the State as a civil contract, to be entered into in the presence of functionaries appointed by the Government.

In saying this, I speak as one who regards the contract as a religious contract also; and I should call upon all over whom my influence might extend to regard it in this point of view, to make their vow in the presence of God, and to seek the benediction of God's minister. This would be the view taken by all who defer to the formularies of the Church of England. But on that very account—on account of my reverence for an ordinance of the Church,—I would guard it from profanation. If the law of the land shall require of all who enter into the state of matrimony that they shall have recourse to the legal forms necessary for the formation of the civil contract; and if the observance of these forms shall be all that is requisite to constitute a valid marriage, then the Church will be able to save one of her ordinances from a degradation to which it has long been subjected; and she may confine the administration of the ordinance to those who approach it with a religious intent, and with that spiritual preparation which is required to render efficacious any rite or ceremony of our holy religion.

Of the extent of the desecration to which our office for the solemnization of matrimony has been subjected, few can speak from experience better than myself, since I officiated for 30 years as curate or incumbent in parishes unusually extensive, at St. Philip's, Birmingham, at St. Trinity, Coventry, and for 23 years at the parish church of Leeds. In the last-named parish the marriages amounted on the average to 25 a week. At one period the misery which a pious clergyman had occasionally to endure in the performance of this part of his duty was so great, that as early as the year 1827 I published a pamphlet, anonymously, uniting my voice with that of the nonconformists in demanding an alteration in the law as it then existed, with respect to marriages. At that time every marriage to be legal was required to be solemnized according to the forms of the Church of England; and if it was painful to many conscientious nonconformists to protest while submitting to the ordinance, that they did not subscribe to the doctrine it implied, it was still more painful to the clergyman to feel himself bound, notwithstanding such protest, to administer the rite. When this proceeding was attended not by pious regret, but by party feeling, on the one side or on the other, disgraceful scenes would sometimes occur in the church.

From this grievance we have been partially relieved; but the alteration of the marriage law, which permitted but did not enjoin the civil contract, has only mitigated the evil. It is believed, that any couple may demand of the clergyman of the parish to be married according to the forms of the Church, on their having been out-asked by banns or on their presenting a licence. To the church, therefore, parties sometimes repair, not impelled by a holy sentiment, but simply for the sake of convenience. The clergyman, in consequence, is not unfrequently placed, from the misconduct of the parties, under circumstances of considerable difficulty, requiring a union of firmness with courtesy and discretion, not always to be found in young men, to whom the administration of the office of matrimony is, in large parishes, generally delegated.

On the highest grounds, therefore, I should be glad to see the law of marriage still further altered, so as to require the civil contract to be entered into by all parties; leaving it to each party to decide whether they will or will not seek the benediction of the Church.

As I presume that your Lordship has asked my opinion simply as a divine, I may be permitted to state that in suggesting such a measure as this, we are only proposing to place the Church now in exactly the same position in which it stood in primitive and purer ages; we may say, indeed, even in ages after the conversion of the Roman Empire, and its consequent establishment as the religion of the State. Holy as the Church in those ages regarded the estate of matrimony, and incumbent on her members, as she deemed it to be, to take the vow at the altar, we never find that she attempted to impeach the validity of those marriages which were contracted under a merely civil form. On the contrary, the marriage of a churchman with a heathen or heretic was censured; being therefore uncanonical, it could not be performed according to the rites of the church; and yet, though the offending party was compelled to do penance for a breach of the canons, his marriage was, nevertheless, considered perfectly valid. If, on the one hand, he broke his marriage vow, although that vow was not contracted in church, he was considered as an adulterer, and did penance as such; or if on the other hand his wife were converted, no new marriage took place. I think that it would be difficult to prove that the sacerdotal blessing, or any other religious rite, was ever considered necessary as a sine qua non to the validity of a marriage, until a law was enacted to this effect by Charlemagne,* about the year 780, whose example was not followed in the East until the year 900, about which time a similar regulation was introduced by Leo Sapiens.† It appears to have been adopted in England about the year 944.‡

Complaint is sometimes made of the character and conduct of the sub-registrars. They are frequently taken from the lower classes of society, and are not unfrequently appointed through political and party influence. They too often assume the airs of "a jack in office," and render themselves obnoxious to the clergy. This might not be worthy of more than a passing notice; but it will be admitted by all persons that the civil contract ought to be entered into with due solemnity, and that we are bound to guard against the evils resulting from clandestine marriages to which facilities are offered in the registrar's office. I would therefore call your Lordship's attention to an Act of Parliament, with which you are of course acquainted, which was passed during the Commonwealth in 1656. That Act, which contains some wise provisions,§ while it treats of marriage as a civil contract, at the same time requires the contract to be entered into before a justice of the peace. If such a regulation were now made, the registrar might be compelled to attend at the summons of a justice of the peace to record the contract made in his presence before competent witnesses, and that attendance would frequently be given in the vestry of the parish church. But wherever the contract might be entered into, the presence of a justice of the peace would add dignity to the proceeding.

There is one difficulty which must be considered and met. If any such measures were to be adopted as that of rendering a marriage by civil contract in all cases not only sufficient but also necessary, a deduction would be made from the income of the clergy, especially in the larger town parishes. In Leeds the fees amounted, when I was appointed to that vicarage, to 500*l.* a year; they diminished in my time to 300*l.*, but this was occasioned by a division of the parish; they still however form a considerable portion of the vicar's income. In parishes where the endowment is small, the deduction of the fees would often be the ruin of the incumbent.

This difficulty might be met, by permitting the Ecclesiastical Commissioners to ascertain the average of fees received in any parish church during the last seven years, and by the purchase of glebe, to increase the parochial endowments permanently to that amount. A condition should in that case be made, that no fees whatever should be demanded by the clergyman for the solemnization of a marriage according to the forms of the Church; one object being to enable the poor to be married in the church, without any charge beyond that which is made by the civil authorities.

I have the honour to be, &c.

The Dean of Chichester.

* Carol. Capitular., Lib. vii., cap. 363. This was long before the time of Innocent III., to whom Blackstone ascribes the regulation. Gothofred and our own learned Bingham think that this was only the revival of an ancient practice. But since they bring no sufficient proof for their conjecture, I strongly incline to agree with Selden, that this was the first time that the necessity of the sacerdotal benediction was established by law. The Fathers, as low down as the time of Chrysostom and Augustine, are frequent and eloquent in exhorting their hearers to be married in church. They point out the advantages and the duty of making the vow at the altar, but these very exhortations prove that their hearers had the option of taking another course.

† Leo Novel, 89.

‡ Leg. Rec. Edmundi, cap. 11. an. 944. Spelman, tom. I.

§ And some rather peculiar ones. A form of words being prescribed, and it being required that hands should be joined, it is enacted that, the words are not to be used if the parties be dumb, and the joining of hands is to be omitted in the case of persons that have not hands.

No. 20.—The Right Rev. William O'Keane, D.D., Roman Catholic Bishop.

Bishop O'Keane.

My Lord, Queenstown, 30th August 1865.

I have had the honour of receiving the circular addressed to me by your Lordship as Chairman of the Royal Commission on the Marriage Laws.

Absence from home has prevented me from sending an earlier reply.

In compliance with the wish of your Lordship I beg to state for your information,—

First, that the Registration Law lately passed, and the parochial registers kept by the Catholic clergyman appear to me to supply sufficient evidence of the celebration of Catholic marriages.

Secondly, the law affecting the marriages of two Catholics, one of whom may be a convert for less than a year, making such marriages null and void, and imposing penalties on the celebrant, ought to be changed. The declaration of the contracting parties that they were Catholics ought to suffice for the validity of the marriage.

Thirdly, the law of divorce, as it now stands in England, is totally at variance with the teaching of the Catholic Church. Though it does not extend to Ireland, yet parties divorced have come, and will come to Ireland; and as the *vinculum matrimonii* can be dissolved only by the death of the husband or wife, the privilege of a second marriage can in no case be granted to such parties during the lifetime of their first partner.

I have the honour to remain, &c.

No. 21.—The Lord Bishop of Rochester.

The Bishop of Rochester.

My Lord, Danbury Palace, 4th September 1865.

With reference to your inquiry of 8th June 1865 on the subject of marriages, I have communicated with persons in my diocese and tried to gather information respecting the practical operation of the laws now in force, which might assist the purpose of the Commission under your Lordship's presidency.

1. First, I feel, according to the best of my judgment, the correctness of various remarks, tending much to the same effect, on this important matter; one gentleman writes of "existing facilities for matrimony without any "religious ceremony whatever, which have made marriages "less solemn and binding in the eyes of vicious persons "than they were formerly, and have tended to encourage "unfaithfulness or indifference as to the solution of such "a union;" another writes, "modern legislation has "lowered the strength of the matrimonial bond. Recent "arrangements, which were introduced out of tenderness "towards nonconformists, have been productive of social "difficulties. A contract made before a registrar or his "clerk, amidst leases and ordinary parchments, which "characterize a lawyer's office (the registrar generally is of "that profession) has not the validity, religious, moral, or "social, which pertained to the solemn mode of alliance "exclusively adopted in the days of our fathers;" A third writes, "The religious sanction of the Church is less and "less regarded year by year. The tendency of recent "legislation is to eliminate the religious element from "services and ceremonies which are needful for the re-"quirements and obligations of social life. The press and "the freedom of thought and expression which are used "now operate in support of this process."

The perfunctory mode of administering oaths in registrars offices, not only detracts from the solemnity of marriage, but facilitates the abuses we specially desire to restrain. And apart from such tendencies, there can be no doubt that greater facilities exist for clandestine marriages in registrars offices than under the open church system.

2. Secondly, I may observe, in the same manner (as affirming the opinions of other persons) that "there is no "question as to the fact that non-conformist chapels "licensed for marriages have materially increased and are "increasing." "Familiarity with non-religious marriages "has tended to diminish the aversion with which even "non-religious persons regarded them at first. They were "*then* generally considered as a *lower caste* mode of alliance "wanting in regard to the respectability and dignity of "the old marriage bond." When marriage at the registrar's office had in a manner lost the savour of what was novel, second class, and of doubtful repute (the character it had at first), and which has been diminished by every additional marriage performed there, this kind of marriage was pretty sure to have a certain popularity. It has gained this. Clergymen of the Church now generally accept the registrar's certificate of banns (about which they hesitated at first) as sufficient for marriage, though

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they may sometimes remonstrate with the parties coming to them to be married by aid of it. But, the various denominations, having no kind of sympathy with the Church, naturally dislike the connexion with it which a marriage celebrated within its walls seems to establish, and argue justly that the publishing of these banns before a church congregation would be useless in their case. Of course the Unitarian and Socinian bodies dislike to have the scriptural language and figurative expressions of the marriage service used on their behalf; they repudiate the spiritual doctrine which the service asserts. Hence the body of Dissenters at large are realizing more and more the convenience of marriages before the registrar, or marriages in their meeting houses upon banns certified from his office. The practice is naturally encouraged by non-conformists as strengthening the *esprit de corps* and pledging its members to settled nonconformity. The civil bond of matrimony is strongly commended by the agents of the dissenting interest. Though there are no fees, properly so called for marriages in non-conformist chapels, yet presents to the officiating minister are always made, which in their cases, as well as in the Established Church, are the principle remunerations of marriage.

3. On the question of attachment to the Church or otherwise, I am unable to draw any adverse or unfavourable conclusion, from the decrease of marriages under her auspices, and the increase at the registrar's offices which has attracted attention. In all rural places the population has decreased. In large towns the Church is only now becoming fairly represented and worked by her own ministers. The causes already assigned (under 1 and 2) with the notorious desire of secrecy and economy on the part of those who have no decided religious feeling to satisfy, seem to me to account fully for what has taken place. It was not to be expected either that the facilities of the registrar's office would be turned suddenly to their full account, or that nonconformists, who were somewhat startled, like Churchmen, at the new order of things in respect to matrimony, would immediately perceive the advantages bearing upon their interests of the civil and secular arrangements. A clergyman observes, "After all, the return sent is not so un- "favourable as it appears; had we not reason to expect "that Dissenters, when they got used to the new practice, "to which at first they felt a proper repugnance, would "gradually and increasingly fall into it, and attach to the "civil contract a religious service in their own chapels? "The figures have a disagreeable look; we appear to be "studiously placed at a disadvantage; but if the numbers "are cast up it will appear that the whole number of mar- "riages in 1862 and 1852 are respectively 7·795 and 7·655, "leaving a deficiency of ·140. Are people less inclined to "marry or more prudent?" In considering the question of increase or decrease of attachment to the Church as indicated by modern legislation, which has affected the dissenting body, a truer estimate of public feeling may be found in the proportion of *burials* in the Church ground of cemeteries as compared with those in unconsecrated ground, than from the matrimonial question. At Southampton, a place where dissent is rife and non-conformist ministers abound, the funerals of Church people to dissenters are five to one. I examined the books myself some years ago and proved the statement of the curator, which was to this effect, to be correct. Recent inquiry shows that the same state of things remains. In the provision at new cemeteries generally claimed and allowed for the whole mixed body of dissenters, a scale somewhat in proportion to this statement is commonly adopted. It was so in a very large cemetery at St. Margaret's, Rochester, the Church portion of which was consecrated the other day, and it has been noticed elsewhere.

4. *Surrogates.*—Under existing circumstances the paucity of such officers is an evil; and it is considered that their offices for business should be made more public. In country places they are not generally known. If the office is continued in its present form the price of a licence should be greatly reduced. The Government stamp duty, which is *pro tanto* an impediment to honest matrimony, should be done away. The surrogate should hold licences in his house, and not have to send to London or to the cathedral town for them, as is now done, to the great inconvenience of parties waiting to be married. There should also be a deputy surrogate, whose services would be available in the absence of his chief. A clergyman, a surrogate himself, writes:—"The present arrangements are very unsatisfac- "tory; constantly people come at the last moment, and as "the affidavit has to be sent hence (the Herts side of Essex) "to Chelmsford, and the licence returned from thence, the "parties take a journey to London instead. There is no "reason why this should occur, or why licences should be "so expensive, and so different as they are in different "places. Often it is not known where surrogates live. "They could not be required to have an office, for the "licences granted in this town and neighbourhood amount "on an average to four a year." Clergymen are often surrogates. They are perhaps more known and more accessible than some men of business; they are better acquainted with the people, and are able to admonish those who would make improper alliances. But there is a snare to the man and to his office, and an inconvenience arising out of this oftentimes. Why should the pastor have to test the legal propriety of a proposed alliance? The simple legality of the union is the question rightfully at issue; its advisability upon family or social considerations should be left to friends. The same arguments hold against making a clergyman a surrogate as against making him a magistrate. It is not his proper office to correct and govern the people by civil or legislative measures. He ought to stand somewhat aloof in such respects; he ought to be the friend and adviser of his parishioner, able and ready to reconcile him to what is right, and persuade him to the proper course; but not to be foremost to investigate the suspicious and interpose legal restraints. There are in every parish so many persons living in concubinage that it is most desirable not to do anything which may increase the difficulties of lawful union between those who have lived ill heretofore. Certainly for ill conducted parishioners to come before the parson is regarded as a painful trial, and is a serious annoyance to such unhappy folks. Nor has the clergyman always got discretion to withhold a severe lecture and reproof on such an occasion.

5. *Expenses of Marriage.*—A correspondent reports:—

Marriage at *Church* by *Licence.*

	£	s.	d.
Surrogates Licence - - -	1	15	6
Fee to Surrogate - - -	1	1	0
„ Clergyman - - -	1	1	0
„ Clerk - - - -	0	10	6
	4	8	6

The above sums are variable.

Marriage at *Registrar's* Office by *Licence.*

	£	s.	d.
Registrar's Licence - - -	1	10	0
Government Stamp - - -	0	10	0
Registrar's Fee - - -	0	10	0
	2	10	0

The above sums supposed to be fixed.

The expense of the registrar's *licence* was at first fixed at 3*l.*; it has been reduced. The cheapest form of marriage by *banns* in most churches is 1*s.* 6*d.* or 2*s. more* than at the registrar's office; often much more. Payments are often demanded at church which are not *ancient fees*, and are unjustifiable. They are often for the servants of the church, and are without legal sanction. They have commonly grown up from the good nature of the incumbent operated upon by the encroaching spirit of a clerk or sexton. It is generally agreed that the expense of marriage is improperly high; the worth of three, four, five days labour to a working man is *very high* and oppressive, and is an inconvenient addition to the little feast prepared for friends, and the needful outfit of house or lodging, or raiment, which has to be borne at that time. Under a conviction that strong objections to church prices (often misnamed *fees*) existed and must work prejudicially to the Church's interest, about 1854, being then Archdeacon of Winchester, I urged Dr. Haggard, Chancellor of that diocese, to alter the fee for licences. A reduction of 10*s.* was then made, which was considered to be sufficient. It did not appear so to me. The accompanying paper on fees was of use in many cases in bringing parochial authorities to correct their modern scale of fees, but it was an optional process. Where parties to be married by banns reside in different parishes double fees for banns become payable, with a certificate of the banns having been asked (2*s.* 6*d.*) in the church where the parties are not married, and the disposition to resort to the registrar's office is increased; (the union for which he acts comprises many parishes), so that generally the double fee is escaped in dealing with him. The second bann's fee becomes especially annoying to the poor in the case of newly formed district parishes, the mother church being near. The second fee for banns, is sometimes (not always) returned by the officiating minister.

Fees in the Church should, by some means, be brought to an equality in all parishes, and with those under the non-religious process. Allowance for the *existing interests* of *surrogates*, and of clergy in large parishes should be provided. Payments for banns and marriages are a material portion of the clergyman's income in some places. A proper lay officer to issue licences and banns as authority for

marriages should be appointed for districts; his certificate should be obligatory on the clergy as authority to marry unless they claim delay of days for the purpose of showing legal cause before a magistrate for refusing to ratify the union. Stamp duty to Government being done away, the fee for licence and for banns should only constitute a fair average remuneration for the work which is done.

6. *Publicity.*—Many clergy hold high language respecting the Church's right to publish, and the open bold system which she pursues in marriages. But many feel (with the writer) that the present mode of asking banns is wrong and offensive. The publication after the second lesson during the service disturbs its solemnity and gives offence. Banns, by Common Prayer of 1662, were to be asked immediately before the sentences for the offertory; they were afterwards transferred to "after second lesson;" but why at all *during the service*, now that every one can read a notice outside the church door. As to the registrar's banns, they are not a *public* notifying of a purpose in view. Formerly, when the banns were read before the guardians, the process partook of some publicity; names of parties purposing to marry were brought before neighbours who could inquire, and who had an interest in keeping down rates which had been or might be increased by illegal and improper unions.

The present system has nothing really public in it. The *interior* of the registrar's office is not a public place. Very great objections are felt by the poor to the publicity of banns. Extreme bashfulness, or even shyness and timidity oppress them. Much disparity of years, or any natural deformity, or ridiculous peculiarity which is observable, or dislike of the alliance on the part of friends (without valid objections) occasions inconvenience. Unfair criticism and condemnation of the marriage by employers, amounting at times to actual bullying and petty tyranny, is not uncommon; even honourable squires will set themselves, *on principle* (*as they say*), against improvident alliances, and follow up their opposition by refusing to let a cottage or even a lodging in a cottage to such as are (in their notions) without sufficient means of maintenance.

Hence in parishes around London (and the circuit is greatly enlarged by the railway) it is a common thing to have banns put up in large London parish churches, amidst vast groups of names, as, "both of this parish," and a habit of evasion and deceit is encouraged among the people. In large towns, London especially, servants will resort to schemes rather than have their names called where their masters and mistresses and fellow-servants attend. A clergyman writes, "When I was curate of Marylebone, "the banns of servants in Paddington, *as a rule*, were "published in Marylebone, as if parties resided there, and "vice versâ."

The Church system of banns is an obstacle to the marriage of those who have been living together in sin. Shame keeps them back. Some of them go to London to avoid notoriety. Most continue in their immoral condition. It is said that the names of such persons are sometimes called in the parish church (as a reproach), as "single man" or "single woman" instead of "bachelor or spinster," and irritation of feeling is stirred up by an injudicious clergyman. In any case, if a clergyman knows his people as he ought (which is in part the ground of his superintending the issue of banns and licences), there must be great reluctance in the offenders to approach one by whom they expect that their conduct will be solemnly condemned, and not always with forbearance or love. There are clergy who boast that they avail themselves of such occasions to give offending parties a good rowing.

7. *Conclusion.*—It is just, that honest, respectable, poor persons should have the same facilities for marriage as the rich enjoy. There is more need of precaution against clandestine marriages in the case of the upper classes than the lower. Sailors, soldiers, &c. should have some easy mode as to time, cost, convenience, &c. Men of such a class who are liable to sudden removal from place to place, and cannot command their time as most working men may do, should have their remedy for marrying conveniently. Young men at home for a short time, who have formed attachments in early days and maintained it by correspondence, and made provision for it, should be considered. If fresh legislation is introduced, the extension of the legal hours of marriage is desirable, 8 a.m. to 10 a.m. is not now so public a time as 12 to 2 or 3 p.m. Let the *same mode* of granting licences and asking banns for all classes and denominations alike be adopted, and made necessary for the validity of marriage. A *second class, cheaper form* of licence seems to be an absurdity.

For banns, let names, addresses, ages, present abode, quality (single or married), trade, father's name and trade, and if living his abode, be given in to the registrar on a printed form (every blank space filled), with a reference to an inhabitant householder in the parish (address given) and who may be required to attend at the time, and let an abstract from these be written or printed on a suitable form, and be fixed on Saturday night at every church or chapel door (as notices of parish meetings, rating, and other like business is announced) and so remain fixed, or if defaced be replaced, for the three ensuing Sundays.

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For licences.—Let any parish clergyman (licensed) certify on a form similar to the above, with spaces filled up, and stating that the parties who desire to be married are known to him as having lived in the parish or district of , and that he is willing to marry such parties upon receiving a licence to do so; a licence to be claimable on this certificate, unless the registrar objects and thereupon proves a valid objection before a magistrate within three days.

2. Let the same privilege and right exist with the non-conformist minister who is licensed and resident in the *district* under the same conditions, or—

3. Accept the same declaration from a local magistrate, subject to the same conditions.

Where such certificates and petitions may not be obtained satisfactorily owing to recent return or entry of the parties into the neighbourhood, let the registrar have power to require and administer an oath for confirmation; and in each case let sufficient fixed payments be required which on an average shall sufficiently remunerate the registrar or his clerk for time or trouble in verifying the statements by inquiry of parties named at referees or at places alleged as abodes, time being allowed (two days, *i.e.*, two nights to intervene) for such inquiry. Require two *friends* of party to be married, to appear at the time and place of marriage as witnesses and to give their addresses; and require such witnesses to be in addition to and independent of the officers who belong to or attend the church or chapel on account of the service therein performed.

Your Lordship's faithful servant, &c.

P.S.—It is reported that publicity as to marriage in France is so effectually secured as to stop clandestine marriages entirely.

No. 22.—A. C. VELEY, ESQ., Registrar of the Diocese Rochester.

The Registrar of the Diocese of Rochester.

MY LORD, Braintree, 15th Sept., 1865.

I HAD the honour to receive one of your letters of enquiry, dated June 8th, 1865, and most cheerfully place the results of my observation and thought at the service of the Commission.

Several of the subjects comprised in your Lordship's letter are scarcely within my province. I will advert chiefly to the circular of the "Church Institution," commenting on the assumed infrequency of marriages by the clergy.

I hold the offices of registrar of the diocese of Rochester, and of the archdeaconries of Essex and Colchester; and in one or other of these capacities all marriage licences for the county of Essex, which are not obtained at Doctors Commons, pass through my hands.

The number of licenses issued by me from 1852 to 1862, was as follows :—

1852	117	
1853	142	Average of 5 years—133.
1854	145	
1855	135	
1856	130	
1857	138	
1858	118	Average of 5 years—112.
1859	109	
1860	105	
1861	90	
1862	116	

These figures agree in the main with the results published by the Church Institution, and appear to show a falling off in the number of marriages solemnized in the church by licence.

I do not, however, agree with the conclusions which have been drawn from such decrease, and am prepared to suggest other causes which may account for the deficiency.

First, I attribute the diminution to a change of sentiment amongst the Dissenting body generally.

For several years after the Dissenters' Marriage Act was passed it was little more than a dead letter. Many among them, especially the female portion, did not like to be married in a form different from that in which their parents had been, and they accordingly went to church on that occasion, if for that once only in their lives.

The Registrar of the Diocese of Rochester.

I personally knew the minister of one of the largest Dissenting congregations in Essex, a man who had a friendly feeling towards the Establishment, who never would have his chapel registered under the Act, and always advised his followers to be married at church. He died a year or two ago at an advanced age, and the chapel was forthwith registered for marriages.

The feeling to which I allude has gradually died away, as the generation has disappeared on which old associations had the strongest hold. Their successors, as might be expected, do and will avail themselves more and more as time goes on of the privilege which the law accords them.

I conclude, therefore, that the apparent decrease is not so much an actual decrease of Church marriages, as a cessation of Dissenters' marriages celebrated at church.

Secondly, the number of marriages by licence, as compared with those by banns, appears to have suffered a small, though marked diminution.

This may, I think, be attributed to the fashion which is beginning to prevail, and which is much encouraged by some of the younger clergy, for persons in a position of life who twenty years ago would have thought it derogatory to be married otherwise than by licence to be now married by banns. Within a few weeks the daughter of a *surrogate* in this diocese has been married in that manner.

It has probably never occurred to those parties that by so doing they sacrifice some advantage in the proof of a marriage. It has happened to me, as doubtless to most other ecclesiastical registrars, that persons who have searched in vain for the register of an ancestor's marriage in every parish in which a gleam of probability appeared to exist, have come at last, almost in despair, to search the register of licences; and have found there what they wanted. No doubt the present extended system of marriage registration obviates some of the defects of the merely parochial register, but in a matter of such extreme importance it is not wise to abandon a single safeguard.

I have stated that the wider and more general subjects adverted to in your Lordship's letter are scarcely within the scope of my judgment; but I shall be glad to answer any specific questions that may be addressed to me.

I have the honour to be, &c.

The Rural Dean of South Easington.

No. 23.—The Reverend JAMES MANISTY, Rural Dean of South Easington.

Easington Rectory, Ferryhill,
18th September, 1865.

MY LORD,

I BEG to enclose a memorial on the subject of marriages agreed to by the clergy of my rural deanery.

I remain, &c.

Easington Rectory, Ferryhill,
16th September 1865.

The clergy of the rural deanery of South Easington, county Durham, assembled in ruridecanal chapter, beg to submit to the Royal Commissioners on the Marriage Laws their deliberate conviction that the effect of the marriage law in its present state is most demoralizing to the people, and also opens a wide door to clandestine marriages.

Believing that the larger increase of the marriages at the register office, and therefore without any religious service whatever, arises to a great extent from the *secrecy* and cheapness attendant on the *register office* marriage, they desire respectfully to recommend as a remedy well adapted to meet the evil, an enactment by which each beneficed clergyman should have power to issue cheap licences within his own parish, such a plan would not only secure privacy, but would put an end to the double expense which in many parishes parties when residing in *separate* parishes have to incur, being now called upon to pay fees for the publication of the banns in *each Church*. The opportunity of being married by banns might still be left open to those who preferred it.

It is desired also to bring under the notice of the Commission the wide spread injury which has arisen from the *state of the law* as to marriages in "*new districts*." The *old Church* of the parish to which families for centuries had been attached, being closed against them, numbers *decline to be married in the new Church*, which is for the most part situate in the midst of a vast working population, where great excitement is easily created on such occasions, and in consequence they betake themselves to the secrecy of the register office. It would seem expedient that for 20 years at least after the formation of a district the inhabitants should have *the option* of marrying at the mother church.

Signed on behalf of the chapter.

JAMES MANISTY, Rural Dean.

No. 24.

MEMORIAL,

Deferentially submitted to the

"ROYAL COMMISSION ON THE LAWS OF MARRIAGE,"

BY SAMUEL CHARLES WILKS, M.A.,
Rector of Nursling, in the County of Southampton.

MY LORDS AND GENTLEMEN,

IN obedience to Lord Chelmsford's requisition, I humbly request permission to memorialize the honourable Commission upon some important particulars touching the setting forth of an intended marriage. These particulars may be classed under four heads:—1. The present law of banns, and the evils thence resulting. 2. A proposal for a banns book, ruled for suitable depositions, and guarded by legal sanctions, to be subscribed by applicants for publication. 3. The expediency of a legislative declaration to quiet certain doubts which have arisen touching due publication. 4. The consolidation, so far as may be, of the preliminary depositions for Church licences, banns, registral licences, and registral notices.

FIRST HEAD (Preliminary).—*The present law and practice of banns, and the evils thence resulting.*

This subject is too extensive and desultory for detail, but I annex a correspondence in which I endeavoured to condense some of the salient particulars.

CORRESPONDENCE ON THE LAW OF BANNS.

From the Clerical Journal of August 17th and 31st, 1865.

SIR,

IT is a praiseworthy characteristic of your journal that you invite correspondents to discuss important questions of fact, though they may differ from you in opinion. Allow me to ask what you refer to when you speak of "the "residence of fifteen days (prevenient to banns) demanded "by the Act?" There is no such Act, as I have shown in detail in my "Law of Banns," of which you did me the honour to say (July 7, 1864), "We refer the clergy to this "little volume, as a storehouse of information on the im- "portant topic discussed." As often as I have seen this fifteen days' fiction in print, or in the overwhelming correspondence which my Banns' Book has brought upon me, I have asked, but in vain, for some shadow of such a law. Wheatly, our best practical canonist, shows in his opening remarks on the Marriage Service (which I earnestly request your readers to turn to) that by law ecclesiastical a person's banns may and ought to be published where the party is actually living at the time, "though he had not been resi- "dent four and twenty hours." His marginal heading is, "Parties not being settled in the place where they are asked, "no reason for forbidding the banns." So says the Church, and the only modifying "Act" is Lord Hardwicke's Clandestine Marriage Act, 26 Geo. II. cap. 33. s. 75. (the provision of which is re-enacted in 4 Geo. IV.), which allows a clergyman, if he sees fit (not imperatively), to require in writing the names of the applicants, and a declaration of their abode during seven days past. By the canons he had been obliged to ascertain due *consent* in the case of minors but he could not always be sure of this, and was sometimes punished because he had been deceived. The Act, therefore, relieved him of this burden, and (as every lawyer knows) made *consent* no longer necessary, but punished the clergyman as a felon if he published banns after *dissent*; and allowed him to demand (at his discretion, but not as the rule) seven days' notice; but exposed him to no penalty, and enjoined no inquiry or visiting, and gave him no power to enforce replies to his interrogatories. This law is bad, and it requires to be altered; and, accordingly, for non-church marriages, the Registrar-General, finding that the banns laws would not suffice for obtaining proper specifications by the parties, backed by punishment for false depositions, procured a stringent Act, not one syllable of which applies to banns; though there are clergymen who, from utter ignorance, have procured the registrar's placard of "Cautions," and affixed it to their church doors. Yet even

the Registrar's Act does not specify fifteen days, but only seven, just as for banns; but with this difference, that the registrar *must*, the clergy *may*, demand that delay, without being punishable, as they were by Church law, for neglect of duty if they did not publish banns forthwith upon demand and proof.

The clergyman's responsibility for consent (as prescribed by the canons) being thus set aside, without any responsibility as to age or consent being thrown upon the parties—no declaration being required from them—any boy and girl may get married by banns without any person being punishable; and I have heaps of letters declaring that "very few of the young persons in our factories" (I quote the words of one of my Lancashire correspondents, the late Canon Stowell) "ever think of consulting their parents "when they marry." To remedy the defects of the law of the land, every parish makes its own laws. Thus, in the model parish of St. James's, Piccadilly, there is nearly as stringent a banns book as that which I propose; but when I asked the authorities in that parish how they would act if any persons refused to submit to their amateur interrogatories, the vestry clerk wrote back, "We should refuse to publish "the banns. *We might be open to legal censure by such a "course*, but as the contingency is a very remote one, I "imagine we run very little risk in the matter." Is this a state of things which our bishops and clergy can approve? The catholicon fifteen days would avail nothing without the power to administer suitable interrogatories, and a banns book to record the questions and answers; and *with* this power a week, or even Wheatly's day, where there is no ground for suspicion, would suffice.

S. C. Wilks.

[*It was residence before* marriage, *not before the putting up the* banns, *that we commented upon. But we confounded* banns *with* licence; *the latter requiring fifteen days' residence of one of the parties.*—Ed. C. J.]

BANNS OF MARRIAGE.

Sir,

I honour the candour and the love of truth shown in your addendum to my remarks (August 17th, p. 155), You have not, like some of my correspondents, said, "The "general belief that there is an Act of Parliament which "requires fifteen days prevenient to the publication of "banns is *primâ facie* evidence that there is such an Act." Or, "Strict clergymen would not demand such notice if "they were not sure that discretion is allowed them to do "so." Or, "If the prevenient time for banns is not legally "the same as for licences, the sooner they are made syn-"chronous the better." Your reply is far more frank and manly: "We confounded banns with licence, the latter "requiring fifteen days' (prevenient) residence of the "parties."

The matter is worth explicating. By the canons, no prevenient time was specified either for banns or licence; and I have shown in my little book on the banns laws that there was in consequence much confusion and evil doing till the Legislature interposed, at the request of the bishops, to provide a remedy. In consequence, the Lord Chancellor Yorke (afterwards Lord Hardwicke) brought in the Clandestine Marriage Bill (26 Geo. II. c. 33.), which proposed that both for banns and licences there should be four prevenient weeks. The Lords and Commons agreed to this for licences, but rejected it for banns, on the ground that licences take effect immediately, and the probation therefore must be prevenient, but that banns are prospective, and would, after the passing of the intended Act, always comprise three Sundays, holidays not being any longer allowed for publication. In Ireland they still are; as the Act, and also our present Act (4 Geo. IV.) are confined to England. In England, till that Act, as now in Ireland, banns might be proclaimed, say on the Sunday, Monday, and Tuesday in Easter week, and the parties be married before noon on Easter Tuesday. Parliament declared it to be unjust, unnecessary, and provocative of evil, to require four prevenient weeks, *plus* three asking Sundays; and the utmost that was thought reasonable was that the clergyman might at his discretion delay the publication one week after receiving the names and residences of the parties. Our present Marriage Act (4 Geo. IV.) abridged the time for licences to fifteen days, but left the banns time unaltered. Those who say that banns still require, or ought to require, fifteen probationary days *plus* fifteen asking days, have to weigh the facts and arguments urged in Parliament against such a delay. Now that licences are abridged to fifteen days, it would be most invidious to inflict thirty days upon banns parties.

You mentioned also in your addendum to my former paper, that it was residence before marriage, not before banns, that you were commenting upon. But the clergy are, practically, as powerless in regard to residence before marriage as before banns, No question is asked in the marriage service as to continued residence; and the entry in the register is only "Residence at the time of marriage," which may be several weeks after the banns are out-asked; and the Act declares that "it shall not be necessary, in "support of such marriage, to give any proof of the actual "dwelling of the parties in the respective parishes wherein "the banns were published." I am describing the law, not commenting upon it. I have said much in my book on banns of the difficulties which clergymen bring upon themselves by assuming legislative or magisterial functions where the law makes them only administrators. In the seemingly simple (but often most complicated and doubtful) matter of ascertaining consent in the case of minors, the Legislature deliberately relieved them of the obligation. But what did it substitute in its place? Nothing; absolutely nothing. The Registrar-General was wiser in his generation for non-church marriages. He knew that in our dense population no public officer, lay or clerical, can ascertain personally all that ought to be known in order to prevent clandestine marriages; but he asked Parliament to give him a stringent Notice book, with all the requisite heads of information to be filled up and attested by the parties, under the pains of perjury for falsification. We have no corresponding banns book. That which I have proposed, I have the honour to know, has been approved by some of our highest authorities in the Church and the law; but they say that the clergy and the laity are at present too generally apathetic upon the subject to allow of much hope of a good legislative measure.

It may seem strange that the cases against clergymen for encouraging clandestine marriages have turned upom comparatively small questions; but the reason is that the really important questions are interdicted. Take, for example, the stock case which is always quoted, that of Martin in the diocese of Exeter. In that case, a father deposed that Martin had "*feloniously*" married his minor son without his consent or knowledge. If it was, as he deposed, a case of felony, the bishop had no right to try a case of felony under the Church Discipline Act or any other Act; and the whole proceeding was, from first to last, illegal. But, passing this by, why did not the bishop try him for marrying a minor without consent? for that was the real offence. He could not do it, for the father had deposed that the banns were without his knowledge; therefore he could not have expressed his *dissent* to the clergyman. Now what says the Act? A clergyman "shall not be punishable by "ecclesiastical censure for solemnizing such marriage "without *consent* of parents or guardians, unless they shall "have given him notice of *dissent*." And what said Sir Herbert Jenner, the judge of the Court of Arches, in the case of Wynn? "The Act of Parliament certainly repeals "that part of the 62nd canon [which the bishop relied "upon in his Pastoral Letter upon banns] which pro-"hibited marriages between minors before the parents or "governors of the minor, either personally or by sufficient "testimony, signified their consent to the marriage." And what says Dr. Lushington, the present judge of the same Court Christian? I have his opinion, lying upon my table in his own handwriting, in reference to a similar case, respecting which he says:—"The charges respecting *mi-"nority* and *want of consent* must be struck out, upon "the ground that such prosecutions are forbidden by *the "Marriage Act, which declares that unless the father or "guardians forbid the banns there shall be no ecclesiastical "censure. If the banns are forbidden, the clergyman is "guilty of felony*."

The bishop was thus driven back to the small matter, whether Martin had taken due pains to ascertain if the minor had resided seven days in his parish. Here, also, I have an opinion lying upon my table in the handwriting of that eminent civilian, Dr. Addams, who says, "I am not "aware that the law imposes on ministers the duty of "ascertaining that persons who put up banns are really "resident in their parishes." The assessors whom the bishop had appointed, when they came to hear the particulars, palliated Martin's proceeding so efficaciously, that the bishop inflicted only a fine of 10*l.*, which every lawyer will say was legally ten sovereigns too much for anything he had done or left undone. I request my readers to reperuse the words of Dr. Lushington printed in italics.

If I were not intruding too far upon your columns, I would quote some of the passages which I have cited elsewhere in print, to show that it was predicted, at the time of Lord Hardwicke's Marriage Act, that this all-heal discretional seven days, even if it were imperative, would heal nothing, still less at our locomotive era, and with our dense population; for a boy and girl may go to any place where they are not known, and, as there is no law to oblige them to sign any deposition about age, consent, affinity, or anything but their names and seven days' residence, it is at his

The Rev. S. C. Wilks, M.A.

peril that a clergyman refuses to publish their banns. The words of the Act are, "shall dwell" not "shall have dwelt."

But the seven-day prevenient scrutiny, even if it were made imperative, would be impracticable. A statement has appeared in the newspapers that, at Manchester Cathedral, there are sometimes 100 pair of banns. But suppose a much smaller number. The bishop of Exeter charged Martin with having neglected his duty by taking the word of his parish clerk and a lodging-house keeper that the young man had resided as they declared. Well, then, suppose only six cases, that is, twelve persons, whom the clergyman must, in person, visit every morning for seven days to know that they have "dwelt, inhabited, and lodged" there the night before, and so on, week after week, and year after year, for every new couple. Some clergymen would continue the duty during the asking. The Legislature has imposed no such impracticable duty; nor, if it had, would the finding the parties at their lodging prove who or what they were. They have only to be silent, and the clergyman is nonplussed.

Permit me to quote the declaration of Dr. Joseph Phillimore, in March 1822, on moving for leave to bring in a Bill to amend the Marriage Act: "Banns have, of late years, "furnished the most effectual cover for evasion, deceit, and "fraud that the ingenuity of man could have devised."

S. C. Wilks.

The foregoing correspondence exhibits only shreds of the argument, and I will restrict my present remarks to the "crying evil," as his Grace of Canterbury justly designates it, of the marriage of minors without legal consent. I have referred in the foregoing paper to the mischiefs which arose from the repeal (*quoad hoc*) of the 62nd canon, without the substitution of any safeguard in its place. The Lord Chancellors experienced the difficulties thus arising as much as the bishops and clergy. Before the Hardwicke Act the clergy could not, under pain of three years' suspension, publish the banns of a minor without ascertaining the consent of parent or guardian; and the Lord Chancellors had thus a check upon them as respected their infant wards. But when the canon was (*quoad hoc*) repealed, without the substitution in its place of adequate depositions by the applicants for banns, their wards had only to elope to some place where they were not known, and the banns being published, and not forbidden on the part of the guardian, who knew nothing of the matter, the marriage was valid, and the officiating clergyman unscathed. Lord Chancellor Thurlow, in a case of this sort, sent for Dr. Markham, the publisher of the banns, and exprobrated him in his well-known style; but, when the question arose of committing him, he shrank back. Lord Chancellor Rosslyn in a similar case (that of Priestley) sent for the clergyman, but could only say: "I feel that it may be very "difficult in this great town for a clergyman with all pos-"sible diligence to execute this duty" [his Lordship did not legally define what the duty was as respected the clergyman] "as effectually as the law *seems to require*," [he did not define what it *really does* require] "but when "a case has occured in which it is clear that if *any* of the "parties" [the clergyman's share still unspecified] "did "what the law required of *all* of them, this marriage could "not have taken place, I must say that it amounted to a "criminality *which I hope will not occur in future*." With this charitable hope he dismissed the clergyman, whose "criminality" he denounced but did not punish. Lord Chancellor Eldon, in 1809, in the opprobrious case of Nicholls and Squire, acknowledged that the clandestine marriage was valid, as he had not forbidden the banns, not knowing of the elopement; and he sternly rebuked the clergyman, but did not see fit to commit him. His Lordship's *obiter* remarks upon the detective office which a clergyman, laying aside all other duties, is bound to discharge in person, and not by deputy, as often as banns are demanded in a parish of, perhaps, 40,000 souls, excited much irreverent merriment, as may be seen in a paper in the Gentlemen's Magazine for 1809, p. 1213, and other papers, where the unfortunate parson is traced in his daily rounds during his whole life to ascertain where some 20 people had "inhabited or lodged" the night before. Grave writers, such as Williams in his well-compiled "Laws of "the Clergy," published in 1822, (when Lord Eldon was living, and his *obiter dictum* had been discussed at Doctors' Commons and elsewhere during 13 years,) urged that there is nothing in the Marriage Act which enjoins upon the clergy this personal house-to-house continuous visitationing, and that the words, "The parson shall not be obliged" to proceed to publication under seven days' notice, do not mean that he is "obliged" to devote seven days to personal inquiry, but only that he was left to his own discretion, as to how, and by whom, he should exercise it, and that the statute exempted him from all "ecclesiastical censure" if no authorized person forbad the banns. No reply was attempted either to the wits or the grave critics, and Lord Eldon's dictum has never been acted upon from 1809 to 1865 in any court, legal, equitable, or Christian. It was to Lord Eldon's dictum that Dr. Addams referred in the passage which I have above quoted.

The "crying evils" of the clandestine marriage of infants need not be dwelt upon, but I am bound to adduce some proof of their frequency, and the impossibility of restraining them under the present law and usages of banns. Such evils, it is admitted, were rife under canon law before the passing of the Marriage Act; and eminent canonists, such as Dean Comber and Archdeacon Sharp, complained that "The clergy did very much offend against the 62nd canon;" the reply being that they could not always ascertain the required consent, and that the laity refused to be ruled by the canons, so that all parties agreed to take small account of them. But the *non fieri debet, factum valet*, doctrine being Church law, the May-fair and Fleet prison marriages were binding; and not many years ago the British Government bought up the old ale-soaked and tobacco-grimed registers, and the filthy pocket-books of the public-house touters recording secret unions, and deposited them in the Consistory Court of London as important documental evidence. I am not certain whether parson Keith's 173 marriages "performed" in one day between 8 a.m. and 8 p.m. are included in those precious records.

In abolishing these enormities the Hardwicke Act did much good; but it failed of preventing clandestine marriages by banns, by deleting clerical canonical responsibility without giving anything in its room.

Thus stands the law, and the practice conforms to it, as was predicted it would in the numerous publications which were issued upon occasion of the passing of the Hardwicke Act. In proof of the extent of the evil I will refer to some extracts, which lately ran the round of the newspapers, from Mr. Arnold's book on "The Cotton Districts." He says: "Juvenile marriages are more common in Lancashire "than in any other of the English counties. The census "returns of 1861 show that in Bolton 45 husbands and "175 wives were coupled at the immature age of 15 and "under. In Burnley there were 51 husbands and 147 "wives, and in Stockport 59 husbands and 179 wives, in "the same category. The same reliable evidence of the "census shows that from 15 to 20 is the age at which a "considerable number of the male operatives, and a still "greater number of the female, are married. No one who "has ever attended Manchester cathedral will forget the "ceremony of asking the banns of some hundred of "names; 19 to 22 in the male sex, and 17 to 20 in the "female, being the usual matrimonial ages."

Upon reading these allegations I applied to the Registrar-General, and to various clergymen and registrars, for information as to the proportion of banns and registral-notice marriages, and also as to the statistics of infant marriages. The Registrar-General replied, "The published abstracts of "marriages at different ages do not distinguish those cele-"brated on the authority of a superintendent-registrar's "certificate; I am sorry, therefore, that I am unable to "assist you in obtaining the information you require in "reference to marriages of minors in certain localities."

My clerical correspondents admitted the evils, but lamented that the law gives them no power to prevent them. One of them, now with God, the Reverend Canon Stowell, spoke the general testimony.—"Manchester, Sept. 30, "1864. . . It is impossible, in a working population "like this, to obtain the particulars you wish for. *Very* "*few* of the young persons in our factories ever think of "consulting their parents when they marry."

The registral officers deponed that they strictly require the stringent declarations commanded by law; which, and the punishment for falsification, they say they carefully explain to all applicants before subscription. It does not appear what proportion of minors without consent, or persons within the prohibited degrees, are driven back by the registrars, or keep aloof from them and resort to churches, where they are under no terror of having to subscribe inconvenient depositions, or being prosecuted for perjury. But, looking at the matter numerically, banns must necessarily bear the chief burden. The following is the Registrar-General's report for 1863:—

Total number of marriages in 1863, 173,510.

According to the Rites of the Church of England.

Special licences - -	19
Licence - - -	19,298
Banns - - - -	109,572
By registral certificates -	4,312
Not stated - - -	3,542
	136,743

In Registered Buildings.

Roman Catholics - -	8,095
Other Christian denominations -	14,714
Registral offices - - -	13,589
Quakers - - - -	51
Jews - - - - -	318
	36,767

There is another particular in which the clergy have lost some check upon banns and marriage of infants without consent. The statute of 1753 enacted, that where either party is a minor, the register shall specify, "With consent "of parents or guardians." In the printed forms these words were left to be inserted in writing, where applicable; but the register of 1812, which continued in operation till 1837, inserted the words in print, so that they were supposed to apply, except when crossed out. The theory was, that silence gave consent; but, when a clergyman had doubts, he could show the parties what they would have to testify, and a false testification, where the law requires one, is punishable. But the register book of 1837, which is the same for church and non-church marriages, omits "With "consent of ——." The registrar loses nothing by this, for he has had a preliminary deposition when receiving the names, but the clergy have not this check.

In endeavouring to correct the evils of the present operation of banns, there are some misapprehensions to be encountered and rectified. Thus, it is reiterated that the dragging those evils into light is "an encouragement to "the *hugger-mugger* godless system of registration." The old word "hugger-mugger," which is defined by Dr. Johnson to mean "secrecy, bye-place," aptly expresses the objection. "The provision," says an influential church periodical publication (the Guardian), "that the marriage must "be solemnized in the parish where one or both of the "parties live, secures publicity to a far greater extent than "the like regulations as to a wide district." But the regulations are not "like," for the registrar has stringent depositions, which the clergy lack. Nor is the question about "the solemnization of marriage," but the prevenients to it; for if those prevenients, whether church or registral, are satisfied, the marriage follows of course. Nor is the distinction between "parish" and "wide district" decisive, for there are large densely-crowded parishes where publicity may be even less attainable than in a registral district; besides which, a Roman Catholic priest, a Jewish rabbin, a Quaker, or a dissenting minister, refuses to receive strangers, whereas a clergyman in a large parish must accept applicants of whom he knows nothing. But these are questions quite subordinate to that of adequate preliminary depositions, and it is from the want of these that banns specially break down. I will collect the two sets of depositions in parallel columns, not as thinking the registral code sufficiently simple, or free from some injudicious details, but to show its exacting scrutiny in comparison with the laxity of the prevenients for banns.

Notice for Registral Marriages pursuant to the Statute of 19 & 20 *Vict. c.* 119.	*Notice for Church Banns pursuant to the Statute of* 4 *Geo. IV. c.* 76.
1. Christian names and surnames of the parties.	1. Christian names and surnames of the parties.
2. *Condition;* that is, whether bachelor or widower, spinster or widow; often a necessary item, as minor widowers and widows can marry without consent of parent or guardian. Also to prevent bigamy, by affording the offender's own evidence of falsification, punishable as perjury.	2. *Condition* not required to be declared. Banns are ordered to be published "according to the form of "words prescribed by the "rubric prefixed to the "office of matrimony in "the Book of Common "Prayer;" which words, are, "I publish the banns "of marriage between M. "of —— and N. of ——." In looking over various old registers, I do not find condition mentioned; nor is it specified in the canons.
3. Rank or profession.	3. No declaration required of rank or profession: nor does any body of Christians include "rank "or profession" in the preliminary inquiries for marriage; though *after* marriage they are useful (if truly answered) in a register for identification, and family and statistical purposes.
4. Age. This particular is most important, as it leads at once to the question of minority and consent. If of full age: "I "further declare that I am "not a minor under the "age of twenty-one years, "and that the other party "herein named and described is not a minor "under twenty-one years "of age."	4. No specification as to age required.
5. Dwelling-place.	5. Dwelling-place.
6. Length of residence. "I solemnly declare, for "the space of (at least) "seven days, immediately "preceding the giving of "this notice."	6. Length of residence. No time specified as necessary. Lawyers say "since "yesterday" will suffice; and Wheatly teaches that the common law and the canonists say the same. The parson may, if he thinks proper, defer the publication for seven days.
7. Church or building in which the marriage is to be solemnized. This preliminary declaration prevents parties who seek clandestine marriage waiting to the last to choose the bride or bridegroom's neighbourhood, as may happen to be best for concealment.	7. The parish where both live or either lives.
8. District and county in which the parties respectively dwell.	8. The parish of each.
9. If a minor, or both are minors, and never married: "I further declare that the "consent of —— and ——, "whose consent is required "by law, has been duly "given."	9. No declaration as to minority or consent.
10. "I solemnly declare "that I believe there is no "impediment of kindred or "alliance, or other lawful "hindrance, to the said "marriage."	10. No declaration as to impediment by consanguinity, affinity, or any other cause.
11. "I make the fore-"going declarations so-"lemnly and deliberately, "conscientiously believing "the same to be true, pur-"suant to the provisions "of an Act passed in the "session of Parliament "holden in the nineteenth "and twentieth years of "Her Majesty Queen Vic-"toria, chapter one hundred "and nineteen, intituled "'An Act to amend the "'provisions of the Mar-"'riage and Registration "'Acts,' well knowing that "every person who shall "knowingly or wilfully "make and sign or sub-"scribe any false declara-"tion, or who shall sign "any false notice, for the "purpose of procuring any "marriage under the pro-"visions of the said Act "above-mentioned, or any "of the several Acts therein "recited, shall suffer the "penalties of perjury."	11. No such declaration.

These declarations are to be subscribed in the presence of the registral official, before the notice (equivalent to banns) can be received, and will be forthcoming on a charge of perjury for wilfully false declarations.

My Lords and Gentlemen, I am an Anglican clergyman,

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with the strongest predilections of my order, and entertaining a full conviction that nothing was ever better devised than our marriage ritual; but I should not be truthful if I maintained that these severe questions propounded by a responsible public officer, subscribed in an official record, and involving the penalties of perjury if the answers are fraudulent, are not to the full as little liable to the charge of being "hugger-mugger," as the depositions made in a surrogate's private room, or the string of names recited as "of this parish," in a place where many of the parties are not known, and some of whom may be infant runaways.

The registral system is, legislatively viewed, a "godless" system. It professes to be so. Each body of religionists grafts its own services upon it; but these must not intrude into a registral office. The Registrar-General "enjoins" upon his staff of officers, "the new duty under the Act "of 19 & 20 Vict. c. 119, of prohibiting the use of *any* "religious service at the celebration of marriages in the "register offices." To say, "I pronounce you man and "wife; and God bless you," is a violation of the statute, as it is a prayer, and there may be persons who do not believe that there is a God. Many devout non-conformists have proposed formularies so diluted that they supposed all might use them; but they found that each man preferred baking his bread in his own oven. But my present paper refers not to *services* for solemnizing marriage, but to the legislative prevenients, the clergyman and the registrar, standing each at his own wicket-gate, and admitting those only to whom the Legislature gives a ticket of admission; but each having his own formularies of "solemnization." The most zealous clergyman, while he laments that an applicant comes before him with a registral ticket instead of a banns warrant, has, at least, the satisfaction of knowing that the candidate has passed a stricter ordeal of depositions than he was empowered to employ. The opinion of the Legislature from time to time has fluctuated upon this matter. The statute of 6 & 7 Will. IV. c. 85. only permitted a clergyman, if he saw fit, to solemnize a marriage in virtue of a registrar's certificate. The statute of 1 Vict. c. 22. sec. 36. obliged him to do so, upon the ground that the legal prevenients do not affect the religious rites of celebration. The legislators of 19 & 20 Vict. c. 119. sec. 11, considering that the church ought to have its own prevenients, or, at least, the option of them, for its own services, returned (and I think wisely and righteously) to the discretional provision; and thus the matter stands at present. Some temporary inconvenience has arisen from the rapidity of these changes; for law books, law opinions, and bishops' directions, differently dated, are relied on as directing the one practice or the other.

Second Head.

As some counteraction, and I trust a powerful one, to the evils which have been specified, I would suggest the adoption of a banns book, containing adequate depositions, to be subscribed by applicants before publication, and guarded by penalties for wilful falsification. Some clergymen, I am aware, give up the whole system of banns as incorrigible. The age, they say, has outgrown them, and many men, and most women, are now-a-days too well-bred or retiring to like to have their names paraded in public. It has been proposed therefore that every incumbent or responsible curate should be empowered to grant cheap licences for his own parish. This would throw a heavy burden upon clergymen in populous parishes; and would convert a parsonage study into a lawyer's office. The secrecy which is alleged as an objection against the registral system would be town's talk as compared with a private whisper in a pastoral library; and as there are Keiths in every profession, we should have a return to some of the evils of the marriage-shop system. The case of episcopal licences (though I could wish that these were not asked for, except with good reason, and that banns were restored to their pristine honours,) is very different; for the surrogates are few and carefully selected; they are under stringent oaths and securities, which could not be extended to all the clergy, and the applicants also are not the multitude. For licences the depositions of the applicants are the security, and this security we might have for banns, if the declarations and forms can be sufficiently simplified. Banns have from early times been associated with the hallowed rites of marriage, of which said Tertullian:—"Unde sufficiam ad "enarrandum tantam felicitatem matrimonii, quod ecclesia "conciliat, et confirmat oblatio, et obsignat benedictio." In a primitive state of society they fulfilled their duty; and even in our own age and nation they are by no means powerless. I believe the day is not distant when our noble and dignified families, and every refined mind of every grade, will consider it paltry affectation to prefer, except for some good cause, a "hugger-mugger" licence, to the public announcement, as Spencer has it—for banns are as poetical as holy—

> "Such grace I found, and means I wrought,
> That I that lady to my spouse had won,
> *Accord of friends, consent of parents, sought,*
> *Affiance* made, my happiness begun."

Nor would "that lady" blush that friends, and neighbours, and tenantry, should know and approve the vows which she was about shortly to ratify at the sacred altar. Then will banns be rescued from the stigma of plebeianism, and restored to their proper jurisdiction. Wheatly said that the partiality of the "gentlemen of the Spiritual Courts" for licences was "because banns are a hindrance to fees." I need not cite Adam Smith to prove that dear banns and cheap banns could not keep the market together for the self-same article.

It will be a step towards this desired end, that the banns book should be a faithful record of the "affiance." *It should be simple, concise, and unmistakably clear; it should include all that ought to be demanded, and nothing more; it should be restricted to matters within the distinct knowledge of the parties, and not involving anything which any truthful person can object to subscribe, or contravening any law of God, or the Church, or the Legislature.*

How far the following brief form would satisfy these conditions, I must leave, my Lords and Gentlemen, to your superior judgment.

SPECIMEN OF BANNS BOOK, *as proposed by the Rev. S. C. Wilks, in his Tractate on the Law of Banns. The Declarations are made answers to questions, so as to require only a few words in filling up; and they are proposed to be legally guarded as equivalent to Oaths. The head of impediments might be explained where needful.*

BANNS OF MARRIAGE: NURSLING PARISH, COUNTY OF HANTS, 1864.

What are your Christian Names and Surnames?	Where have you lived the seven days last past?	Are you Bachelor or Widower? Spinster or Widow?	Are you, to the best of your belief, of the full age of twenty-one years?	If you are under twenty-one years (and not a Widower, or Widow), have you the consent of your lawful Father, if he is living; or, if is dead, of your Guardian? or of your Mother, if you have neither Father nor Guardian?	Do you know of any lawful hindrance to your marriage?
John May.	6, *Grove Place, Nursling.*	*Widower.*	*Yes*; 26.	——	*No.*
Mary Dew.	5, *Queen's Row, Nursling.*	*Spinster.*	*No*; 20.	Yes; my father's.	*No.*

My declarations as above are true: *John May, June* 4. Witness: *S. C. Lovegrove, Rector.*

My declarations as above are true: *Mary Dew, June* 9. Witness: *F. Stave, Parish Clerk.*

First Asking,
Second Asking,
Third Asking,

I will briefly state my reasons for selecting these particulars for specification, and these only. My reason for giving to them an interrogative form is, that long before the battle of Waterloo, in filling up papers for my unlettered parishioners, about soldiers and sailors, I found that I had first to make myself master of the forms, then to explain them, and then to propound the resulting questions, which I sometimes thought might have been propounded without those preliminaries. For example, I ask the man in the above table, "Are you bachelor or widower?" of course he does not apply as a married man. The word "condition" was first introduced in the non-church marriage Act, and the same day into our marriage register books. But being a new word, it required to be explained. In the eight meanings which Dr. Johnson gives to it, there is not one which implies bachelor, husband, widower, spinster, wife, or widow; nor do I find any other lexicographer who gives the registral meaning. The popular phrase of "changing one's condition" means simply marrying, without indicating the antecedent "condition." When a rustic bridegroom is asked, "What is your condition?" I believe he thinks it means his occupation, or whether he is able to maintain a wife; and I observe that parish clerks always interject, "Are you a bachelor or a widower?" I would ask this at once, for the shortest word does not always marshal the shortest way. The word is now naturalized in our marriage register books, but we can do without it in a banns book.

1. The first question, as to the names of the parties, is of course essential for episcopal licences, banns, registral licences, and registral notices, in order to designate the parties. "For banns," said Lord Stowell, "the names "must be true, otherwise there is no publication." The parents or guardians have a right to have their attention awakened. A name known by both parties to be false for deception invalidates the marriage.

2. To inquire where the parties have lived the last seven days is not a question new to the law, for a clergyman may already require this information, but he is not obliged to act upon it. He may publish forthwith, and this was urged as a merit of the Hardwicke Act, in reply to its opposers. "This ungrounded objection of delay," said Sir Tanfield Leman (1754), "which is manifestly calculated to inflame the very lowest of the people, has been re-echoed from newspaper to newspaper." "*A country clergyman*," in another pamphlet (1755), says, "True the minister is not "*obliged* to "publish the banns, unless he has seven days' notice before-"hand; but he may do it if he pleases. It is a discretionary "power in him; *and as the most prevailing opinion is, "that no impediment should be unnecessarily thrown in the "way of matrimony, it is probable that he will do it upon "less notice, or upon immediate request*." I would propose that the seven days' delay should be made imperative, not optional.

It might be well to declare by statute that the parish entered in the banns book is, for the purposes of banns and marriage, the parish of the party till the day of marriage. In this migratory age, a man cannot be shut up in a box during fifteen days banns and three months after. This definition of parish would prevent many scruples and litigations. When a clergyman has gone to the extent of his tether by demanding seven days' residence prevenient to banns, and the party is heard of no more till he comes to be married, more than three months after, questions often arise about the legality of designating him in the marriage register as "of this parish." There is a clause of indemnity in section xxvi. of the marriage Act (4 George IV.) which declares that "after the solemnization "of any marriage under a publication of banns it shall not "be necessary in support of such marriage to give proof of "the actual dwelling of the parties in the respective parishes "or chapelries wherein the banns of matrimony were "published." To quiet all doubts, and ease many consciences, it might be declared (or if not already law, enacted) that the parish proclaimed from the banns book attaches to the party till the marriage. If the declaration of residence was fraudulent the party would be punished as for perjury.

3. The inquiry, "Are you bachelor or widower, spinster "or widow?" though customary and never objected to, would be legally a new requisition for banns. It is not commanded by any canon, rubric, or statute, and it is employed only as a designation; but its introduction would be useful to convict and punish a bigamist, and also because a minor relict may marry again without consent. I would not print in the banns book any title for divorced persons. The Queen's law officers some years ago recommended the Registrar-General to entitle them "single;" not a definite word, for all applicants for wedlock must be "single;" but it would soon be understood in this discriminative meaning, and might be supplied by the pen. It seems to me, who am no lawyer, that, for banns, "single" is as legal a word as bachelor or spinster, which are not legalised at all, unless it should be said that custom has legalised them, for no word of condition is anywhere directed. But the registrars are tied by statute to the declaration of condition. When new occasions arise, the lawgivers, not its administrators, should make new forms.

Whether the words of "condition" are obligatory, or only useful and customary, is of no importance as respects their being legislatively introduced into a banns book, except that enactment is surplusage where declaration is sufficient. Dr. Waddilove in his treatise on the laws of marriage considers them to be so clearly obligatory as to be codifiable. I, as an unlearned man, must bow to this eminent civilian, whose codification I will quote side by side with the statute.

Statute.	*Codification.*
"All banns of matrimony	"Banns shall be published
"shall be published in an	"in the church in which
"audible manner in the	"the parties to the intended
"parish church wherein the	"marriage may dwell in an
"persons to be married shall	"audible voice by the offi-
"dwell, according to the	"ciating clergyman, who
"form of words prescribed	"shall use *the following*
"by the rubric [which are	"*words*, 'M. of — (bache-
"M. of —, and N. of —.]"	"'lor, widower, or single
	"'man), and N. of —
	"'(spinster, widow, or
	"'single woman).'"

Dr. Waddilove's meaning would have been clearer if he had quoted the rubric instead of codifying it. I never saw in any liturgical treatise any word of condition, inserted between M. and "of," or after "of." The word "single" is a novelty. The statute of 1753 does not mention condition (either name or thing), nor do the banns books which were published upon occasion of that Act. The first time that "condition" was introduced as a prevenient deposition was in the statute of 6 & 7 Will. IV. c. 85; but it was prevenient only for registral marriages, not for banns. Banns are not alluded to, directly or indirectly, in that statute. The new word "condition" was for the first time introduced into church marriage registers to make the church and the non-church marriage registers counterparts of each other for a national registry. But the entry in the marriage register did not re-act coercively upon banns. If it did, the banns announcer must publish the other new items, including the names and occupations of the bridegroom's and bride's father. These were my reasons for treating condition enactively, not declaratively.

4. The opprobrious facts which I have referred to under the first head show the importance of applicants for banns deponing whether they are, to the best of their belief, of the age of 21 years. The Church had long fixed that age for marriage without consent, but the Legislature did not do so till the statute of 1753. Males of 15 and girls of 12 might legally contract marriage without consent. A few years ago the registrar-general sent to the clergy a form in red and black ink, directing them to insert the actual age in the marriage register; but as the statute specifies only "full age" or minority, I have not asked for the age in years for the banns book. I never met with a bride who refused to give me her age, though I have sometimes thought that a matronly woman had made a mistake. Some inexperienced clergymen, with laudable zeal to check juvenile marriages without consent, go to their lawyer, and are told to their surprise that "fibbing is not perjury." Make the proposed depositions legally equivalent to oaths, and the vagrants, being cross-questioned respecting what they will have to sign before their banns can be published, may shrink from trying to overleap the barrier. If not, they will be punishable, and the dread may deter them.

5. The inquiry as to consent would not be necessary where the party had already deposed to full age or being a relict. This would abridge the taking the depositions. It was a fearful state of law when, perhaps, in the second or third generation the discovery that legal consent had not been given to a marriage, and that, therefore, it was void, and the offspring illegitimate. This law is amended, but still due consent, at an age when the judgment is weak and the passions are strong, is important for the happiness of families, and especially of the minors themselves.

6. The inquiry respecting legal impediment is new for banns; but it only calls the attention of the parties to what the law requires.

These requisitions would not be found burdensome in any honest case; yet, if well administered by a faithful and skilful pastor, they might often prevent much mischief. The knowledge of having to answer such inquiries would itself be a preventive check. To the clergyman and the candidates the interview might be turned to beneficial pastoral account.

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The above proposed depositions for banns differ from those in the register for marriage only by what is in its nature prevenient and what is subsequent. By law the residence of the parties is not to be inquired into after marriage to disparage it; but it is important to be known as a prerequisite to banns. The name and rank or profession of the fathers of the bridegroom and bride (if correctly stated) are useful in a marriage register for tracing pedigrees, deciding the rights of property, and other purposes; but they are not wanted as prerequisites for matrimony. And so the heading of the "rank or profession" of the bridegroom and bride in the marriage register is useful for similar purposes, but it has nothing to do with the rights of nature or the ordinance of God in relation to the marriage bond. The Church knows nothing of rank or profession. The clergy rightly exert themselves to discountenance misalliances, which are usually fraught with misery to the parties concerned and their relatives; but before the altar all mankind are one kin; none are high or low, rich or poor. I abhor the class legislation of the 101st canon, which requires that licences shall be granted "unto such persons only as are of good "state and quality;" but this does not apply to banns. Lord Stowell said of licences, "No disparity of fortune will "impeach the vinculum of the marriage; and the mere "description is not a constituent part of the affidavit." This somewhat palliates the objection against the introduction of "rank or profession" into the banns book; but the public do not make nice distinctions; and even for mere specification the description is out of place, for the specification does not savour of what relates to the marriage bond. If it would be unseemly to announce the trades and occupations of the parties from the altar, why place them in the banns book? This Christian simplicity is a beautiful feature in church rites. Our honoured Queen is "this woman," and the Prince of Wales "this man." I have heard labourers call farmers' wives "the quality;" and a poor man does not consider himself of any "rank of "profession;" he is only "a poor man." The Hardwicke Clandestine Marriage Act was nearly shipwrecked on account of the prejudices excited against it, as breathing, said flippant Lord Orford, "the very spirit of aristocracy and inso-"lent nobility;" which, others replied, prevails just as much among traders or peasants as among courtiers. Why then build a wall to knock one's head against? I have written thus, because, as the words "rank or profession" are used in the register of marriages, and also in registral licences, notices, and certificates, they might slip into the banns book, where they would do no good, and might do harm, as if referring, for matrimonial qualifications, to distinctions between "the humbler classes" and "their betters."

And here I must interpose a remark which appears to me of great moment, but which I have not seen adverted to in any of the discussions in Parliament or elsewhere, namely, the consequences which resulted from passing the Acts 85 and 86 of 6 & 7 William IV. c. 85. on the same day,—August 17, 1836. The Act No. 85 was entitled "An Act "for Marriages in England;" but it was altogether a non-church Act. It was the Act which authorized registral marriages. Being confined to this one object, its proposers had a good right to insert in the Bill what provisions they thought necessary, and to set forth a tabular schedule comporting with them. In the pattern schedule, "John Smith," who wishes to be married at "Sion Chapel, West Street," is obliged to specify his "rank or profession," which is "carpenter." In that Act marriages solemnized by episcopal licence, or special licence, or banns, were excepted from its operation. The Statute No. 86, dated the same day, is entitled "An Act for registering Births, Deaths, and "Marriages in England;" *registering*, nothing more. The non-church Marriage Bill (No. 85) was debated, but its opposers were defeated; and No. 86 passed almost in silence, as being merely a Register Bill, not a Marriage Bill; and no member of either House, so far as I can recollect, objected that it was not merely a register, but that it brought in new matter to be registered. The "rank and profession" of the bridegroom and bride was, for church marriages, new matter; and for all marriages the "rank or profes-"sion" of the bridegroom and bride's father was new. It seemed, at first blush, a useful statistical record; but it was exacting and inquisitorial; it often revealed painful family secrets, not known, perhaps, before to "the other party;" it has unquestionably led to much perjury (for false deposition is declared to be so); and coming suddenly upon the parties, who do not expect such questions, but are obliged by Act of Parliament to answer them, there is often blushing, hesitation, quibbling, and at length falsification, followed, no doubt, by domestic discords. A professional gentleman knows that at his baptism his father was designated "menial servant;" persons of middle age, of good, perhaps high, social standing, may find a grosser word than "illegitimate" recorded against them at their baptism; and a man who at the altar calls his father "a mariner" may know that the only voyage he ever made was to Botany Bay. Though such bygones are asked for in the marriage register, I protest against their admission into the banns book.

I will test the above statement by figures. The illegitimates registered in England in 1860 were 42,694. The statute enacts that any wilful falsification in the marriage register shall be punishable as perjury. No woman can brand any man in the baptismal register as the father of her illegitimate child; nor can the illegitimate claim a father in the marriage register. Will, then, the above 40,690 (who are only one year's crop) divulge the truth when they come to be married? Will they expose the shame of their mothers, and disgrace themselves before their partners, friends, and the world? The Registrar General, in his "Explanatory Circular," says that those two columns may in such cases be left blank. But the blank is a blot; the hiatus tells the tale as clearly as words. On opening a marriage register I find but one blank in 100 entries, and the case of this one person out of 200 was too notorious to allow of falsification. I count 200 baptismal entries, and find 18 illegitimates; so that upon this average 17 illegitimates out of 18 perjure themselves. How many legitimates subscribe stilted falsehoods cannot be known; but the temptation to appear to advantage on a bridal day is not favourable to strict accuracy. There should be no man-traps or woman-traps in the banns book.

Such a statute as I propose would be very short and simple. It would save much trouble to the clergy, who would be only administrators, and not answerable for the truth or falsity of the averments, though well armed for getting at the facts, which they are not at present. The questions are so quiet and natural, that applicants would not feel themselves inquisitorially "put upon." The Act might be called "The Church of England Banns Act." Copies of the book, with the Act prefixed, to be furnished to parishes in the same manner as register books. Slips of the form to be supplied for applicants. Fraudulent declarations punishable as in the Marriage and Register Acts. The present laws and usages respecting fees not altered. If the parties do not make the declaration together, the notice to date from the second declaration. The clergyman, or, with his consent, the clerk, churchwarden, or other appointed officer to witness the signatures. Parties living in different parishes to make their declaration in their own, and the counterpart to be sent to the parish in which the marriage is to be solemnized. Only names, condition, and parish to be given out in church, so as not to burden the publication. No paper required by this Act to be subject to stamp duties.

For such a Bill as this there would need no examination of witnesses or elaborate report. It should be entirely detached from the laws of marriage, so that any alterations in those would not affect it. For instance, if any alteration were made in the laws of affinity, the question in the banns book would still continue applicable. For these and other reasons, I think the Bill should not await any general Marriage Act, but precede it, and be ready to co-operate with it.

The subjects upon which the "Royal Commission on the "Laws of Marriage" is directed to inquire and report are—"The various laws now in force in the different parts of "the United Kingdom of Great Britain and Ireland with "respect to the constitution and proof of the contract of "marriage, and the registration and other means of pre-"serving evidence thereof; and also into the state and "operation of the laws of the United Kingdom in relation "to the marriages of European British subjects in India "and in the colonies, and also into the state and operation "of such of the laws of the United Kingdom as relate to "the marriages of British subjects in foreign countries." The question of the law and operation of banns is strictly germane to these inquiries; but it needs not await their termination and results. It concerns matters not only nationally important and pressing for adjudication, but which are detachable from ulterior questions; and it is not too much to ask for 109,572 pairs of banns one short regulating statute, when the Legislature has granted several for the regulation of non-church marriages. For want of such a definite statute, I have had in this humble memorial to grope my way over stepping-stones as best I could. I do not see how any party, if parties we must have, could grudge the Church an efficient banns book. In former days there might have been an outcry about coercion and gagging Acts; but after several successive Parliaments, while allowing every man to be married how and where he pleases, have given to the registrars a more severe code of depositions than the Church asks for, the Church assuredly is not too exigeant in asking for one moderate safeguard statute. If, for instance, the marriage of infants without consent of parents or guardians is to be encouraged, the Legislature ought to begin with removing the restrictions

in the registral statutes. But all wise and good men acknowledge that *some* restraints are necessary for the welfare of all parties; and, if so, why should the Church lack what has been given to the registrars?

I have been told that my proposed banns book is "moon-"shine," for who shall keep the keepers? Our present marriage law of 1823 directs that the churchwardens of every parish shall provide "a proper book of substantial "paper, marked and ruled in manner directed for the "register book of marriages [namely, the register of 1812], "and the banns shall be published from the said register "book of banns by the officiating minister, *and not* "*from loose papers.*" But the Legislature did not provide such a book, or direct how or where churchwardens might procure it. The enactment was for some time much overlooked, and to this hour, it is said—I do not know it personally—that some clergymen publish banns from loose papers. The fault was in the lawgivers, who did their work only by halves, for they should both have provided the book, and taken care, by penalties and due supervision, that it was used. From 1754 to 1865 there have been several banns books published, all professing to be "according to the statute," but they differ from each other, and none of them are authorized. Should such a banns book as I have humbly proposed be adopted, the Legislature should not only provide the book, but attach penalties to a publication of banns without the declarations having been made in it. Experience has proved that in such matters responsible public officers are needful to see that the commands of the Legislature are obeyed. Visitation presentments do not include many things which ought to be presented, and when presentments are made they are not always attended to. I have seen archidiaconal questions extend to many non-canonical or legislative requisitions, but I never knew it asked whether the above-recited enactment is carried out. Yet the Legislature considered it of importance, and the principle was adopted that the banns book ought to be a permanent register; though, as nothing was required to be recorded, except that a boy and girl applied for banns, and that they were "of this parish" (which for the time being they were, for ecclesiastical jurisdiction), a loose paper would very well serve till the marriage called forth, when too late, the necessary depositions. A precocious boy's "loose sheets" in "joining hand" are no permanent trophy, if he never writes anything worth joining. The Parliament of 1823 ordered the book; I ask the Parliament of 1865 to join what should be written in it.

Third Head.

The proposed banns statute would afford a favourable opportunity for settling a moot question which has vexed the Church for more than a hundred years, namely, whether, during morning service, banns should be published after the Nicene Creed, or after the second lesson. An enactment would not be wanted, but only a declaration that the statute of 26 George II. (or our modern Act, 4 George IV.) did not change the time for announcing morning banns as set forth by the rubric prefixed to the marriage office, I mean the genuine sealed book rubric, as inserted by statute in the Prayer Book, and never by law expelled, not the modern unauthorized substitute for it. This declaration would quiet many controversies, introduce uniformity of practice, be grateful to the clergy of all shades of opinion, and unite England and Ireland upon a question which irritatingly divides what ought to be an United Church. To show the importance of the matter, it is only necessary to say that the Marriage Act of 4 George IV. enacts that a clergyman convicted of knowingly and wilfully marrying persons without "*due* publication of banns" (I omit the question of licences), shall be transported as a felon for 14 years; and that the marriage is "null and void" of persons knowingly and wilfully so marrying. Ignorance, proved not to be wilful, may save the offender, but it does not alter the law, or decide what is "due publication." In Ireland, to which the English marriage law did not extend, morning banns have always been published after the Nicene Creed; but in England and Wales the post-second-lesson practice has extensively, I might say generally, prevailed during many years, from what I believe most persons who have carefully examined the question now consider to be a misconstruction of the statute. The question, What is "due publica-"tion?" in regard to this point has never been decided by the Courts, but any person who wishes to upset a marriage may have it tried, and the decision, whatever it might be, would cause much anxiety, and perhaps serious danger, to many families. A short clause declaring the true construction, validating all past marriages celebrated by banns hitherto published either way, and forward to (say) 12 months, and indemnifying the privileged printers and the clergy up to that time, would be a blessing beyond what those who have not looked into the matter would anticipate.

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The introduction of the word "due" into the statute of 1823, which was not in that of 1753, has made the matter more serious than it was formerly. The statute of 1753 declared marriage "without publication of banns" to be "null and void." It specified nothing but publication or no publication. Dr. Burn, who took the post-second-lesson construction, writing shortly after the passing of the Act of 1753, said that if a father came into the church before the second lesson, expecting his minor son's banns would be published, and they were not; and he went away, and they were published after the Nicene Creed, the clergyman would not be "in a desirable situation." He goes on laying down the law in an authoritative manner, which led me, in some remarks which I published in my Banns tractate, from an imperfect note, to suppose that he was proceeding with the words of Lord Mansfield, whose observations upon the law of banns he had been quoting; but he, not Lord Mansfield, was contending that the statute had relegated morning banns to after the second lesson. Still, either way, the judges might decide that there was some sort of publication; whereas now they would have to settle the question whether the wrong time publication is "*due*" publication. It is contended that there cannot be two ways of "due" publication; and that the wrong way is null and void. Sir Herbert Jenner recognized this distinction when he said: "It seems to me that a marriage "was void under the statute of 26 Geo. II., only when "there had been *no* publication at all. *Undue* publication "was not sufficient to void it (as it is under 4 Geo. IV.), "unless it amounted to the absence of *all* publication." Many learned authorities, and especially the late Baron Alderson, have maintained that post-second-lesson morning publication is, in law, no publication; that the modern foisted rubric is illegal, and every act done under it invalid; and that the sealed book rubric ought to be restored. Judge Bailey in his Prayer Book, published in 1820, gave the old rubric; but whether advisedly, or because the printer used an edition which gave it, I cannot say.

The object of the Marriage Act, in this behalf, I think clears up the meaning. By the law of the Church, banns were to be proclaimed on holidays as well as Sundays. Thus Lyndwood says, "Si tres dies successivi festivi con-"currant, sicut contingit in hebdomadâ Paschæ et Pente-"costis, sufficit quot singulis trium dierum hujusmodi "bannæ edantur." This law was embedded in the rubrics of the Edwardian and Restoration Prayer Books; but the Legislature of George the Second were of opinion that it was fruitless to forbid clandestine marriages, if runaways might have their banns put in at a strange place on Christmas Day, or St. Stephen's, or Easter Sunday, or Whit Sunday, and be married two days after, before their friends knew that they were out; or in any month in the year might abridge the time of publication to a week or less by means of a holiday or holidays intervening between two Sundays. Banns were therefore to be restricted henceforth to Sunday publication.

But here arose a difficulty. The Edwardian rubrics only directed the banns to be proclaimed during divine service "after the accustomed manner." Whether this confined banns to morning service, or to what part of it, I need not inquire; but the Restoration rubric said, "Immediately "before the sentences for the offertory," so that from 1662 to 1753, in those churches, of which there were vast numbers, in which there was morning service only on the alternate Sundays, Caleb and Cicely, delighting to hear themselves proclaimed on a bright Mayday Sunday, would have to pine till the rosettes of Boscobel oak for the welcome out-asking. We, who live when a century of orderly three Sunday banns has accustomed the people to that regulation, can scarcely understand the outcry against the Clandestine Marriage Bill as causing delay in making lovers happy. Liturgists, like Dean Comber, had complained of those clergymen who, in contempt of the canons, "Pre-"sumed, for gain or favour, to make clandestine mar-"riages without either banns or licence;" but no public disgrace was attached to such proceedings. Who but has read the pathetic story of Gay, over which five generations have shed tears, of the two rustic lovers, John Hewet and Sarah Drew—Thomson's Celadon and Amelia,—the pride of their village, who were struck dead by lightning in each others arms at Stanton Harcourt, where Pope, who was living in Harcourt tower, translating his Homer, penned an inscription for their memorial in the village church? "This very morning," says Gay, "he had obtained her "father's consent to their union, and *it was but to next week* "that they were to wait to be happy." Their pastor was not a Fleet Prison or Mayfair Judas, "recreant to God, of "all true good despoiled," nor were the lovers runaways.

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Such being the public feeling, the Legislature cut out from the Bill the proposed four weeks' prevenient residence for banns and granted but one week, and that only discretionally where a clergyman saw cause for delay. To accommodate impatient Calebs and Cicelys, banns were in future to be published during evening service when there was no morning service. Nothing was said in Parliament of altering the morning time as statutably directed by the rubric, for which a repealing clause would have been necessary. No person complained of post-Nicene-Creed publication. The clergy and the people approved of it, and all that was needful was to allow the afternoon to compensate for taking away the holidays, and to prevent lovers waiting a fortnight between each publication where there was only alternate morning service. To carry out this intention the following clause was inserted. I will give it without breaks or punctuation, only relegating morning and evening to parallel columns:—

. . . "according to the	" or of evening service (if
" form of words prescribed	" there be no morning ser-
" by the rubric prefixed to	" vice in such church or
" the office of matrimony	" chapel) immediately after
" in the book of Common	" the second lesson."
" Prayer upon three Sun-	
" days preceding the so-	
" lemnization of marriage	
" during morning service	

Surely this clause does not inevitably require to be construed as repealing the morning law in adding the evening. How or when the pseudo-rubric was first inserted in the Prayer Book the gentlemen of the authorized presses have not been able to inform me. But it is clear that its insertion, without legislative authority, was, though well meant, a breach of trust. But there was much laxity in those days which would not now be tolerated. Thus the Clarendon press made Wheatly—a weighty authority—say, "It " is ordered by a late Act of Parliament that *all* (all) banns " of marriage shall be published after the second lesson." But the statute did not pass till 1753, and Wheatly died in 1742. The late Bishop Turton, in his "Defence of the " English Bible as printed by the Universities," says that Dr. Blayney's edition of 1769, which embodied 30,409 deviations from the original edition of 1611, "forms the " basis of the editions now published by both Universities." I am thankful for many of the emendations, but they were as unauthorized as the sham rubric.

The amateur rubricians meddled and muddled. In some Prayer Books we have the old rubric, and, consistently with it, the post-Nicene direction "then" to publish banns. In others we have the genuine rubric, but its counterpart, " banns," after the Nicene Creed, is expunged. In others we have the new rubric, but the post-Nicene banns is retained. The King's printer was the only consistent party, for he followed the sealed book exemplar till the statute of 1823; but the enactment in that statute was word for word the same as 1753. People quote these novel readings from their Prayer Books, not knowing that they are using mangled editions.

Some of our most careful prelates inform me, that, in consequence of the resumption of the old practice in many of our churches, their clergy have asked for their instructions, but that they decline giving any till the Courts or Parliament determine the question. They might perhaps be satisfied with the opinion of Her Majesty's counsellors learned in the law.

Surely, then, there is a *nodus vindice dignus* in a banns statute. But, even in the absence of legislative declaration, a well-considered opinion by the law advisers of Her Majesty's Government might quiet the prevailing diversities of opinion among the clergy. It is not a party question, but it may soon become so; for truly said Dr. Nicholls, a century and a half ago, in his valuable "Comment on the " Book of Common Prayer," "Since men have gotten " into their heads a notion of *two Churches of England*, " they are taking up different meanings of our Common " Prayer Book; and different shibboleths to distinguish " themselves by in performing its service." It may seem difficult to suppose that any shibboleth can arise from the dry question whether the clause in the statute does or does not direct a certain act to be done at a certain time. The matter is in itself puerile; and if the Legislature shall declare, or even Her Majesty's law officers be of opinion, that *both* times of publication are "due" publication, and that a person intending to forbid banns is bound to be at church before the second lesson, and to continue till after the Nicene Creed, as he cannot know beforehand the particular fancies of the clergyman; then the question is settled, and each party may take his own course. But if this is not clear, and a shibboleth is likely to divide us into "two Churches of England," the matter, though puerile in itself, may be important in its consequences.

I cannot understand what hitch there can be in giving an "opinion." A lawyer has before him the Act of Uniformity, which validates the rubric that declares that banns shall "then" be published; that is, between the Nicene Creed and the sermon. And what does he find that can be grasped at as by any possibility contravening this direction. Only a few words in a new statute, which are perfectly satisfied with being limited to the new matter without touching the old; and when, moreover, there is nothing antecedent, concomitant, or subsequent that affords the slightest implication that the Legislature contemplated any alteration of the old practice, so far as it extended.

No liturgical dispute needs now hinder a declaration of this being the meaning of the statute. The sealed book rubric coincides with the law and practice of our Irish brethren, and that is one trouble saved. Many careful clergymen, during a hundred years, have adhered to the old direction, which of late has been extensively followed out; and many who think the old legal, and the new illegal, submit to the new only for prudential reasons. Many would prefer the old practice if they thought it was legal; but, till the recent discussions, they were not aware that the new rubric was not the genuine one. None, I believe, would refuse to obey the old rubric if convinced that the new was spurious. The adjustment, therefore, is now easy; but the Legislature will be embarrassed if, the matter being left in abeyance, the laity shall set up a faction fight for the shibboleth of "Two Churches of England."

Fourth Head.

The subject of this my deferential memorial is banns; but the consideration of banns leads to a survey of the other preliminaries which the law allows as opening the avenue to marriage. These are *episcopal licences, registral licences, and registral* notices. The laws of marriage being the same for all, though those prevenient forms differ, I humbly submit that the four preliminary sets of deposition should, as far as possible, be consolidated; and I think that a very near approach to uniformity can be secured without strife, and with public acceptance, if the question is approached with right feeling and good judgment. I should deprecate a Bill of consolidation, or what is called "amalga- " mation" as fraught with mischief, and sure to awaken party contests. I would propose that we should adopt the principle which has of late years been carried out in our intercourse with foreign nations for promoting the freedom of trade. Our statesmen used to try to proselyte their neighbours, but with little effect. At length we discovered the "human- " nature" plan of devising good measures, and leaving other lands to adopt them when their value became apparent. I would propose that we should do one thing at a time, and do it well. On every ground the first reform ought to be in banns. If the Church of England, whose banns publication is open to more than twenty millions of persons, can establish a form of depositions, simple, yet safe and adequate, the advocates of the registral system might be only too glad to simplify their own code, and (*mutatis mutandis*) to follow the Church in its preliminary depositions; and if not the good plan would be beneficial so far as it extends.

I had considered whether episcopal licences, being a Church matter, might be amalgamated in the proposed Bill for banns, but the coalition is impracticable while oaths remain, and any attempt to tow the smaller craft with the larger might cause both to drift into perilous waters. A Church licence requires the oath of two deponents; but no person would dream of introducing oaths into the depositions for banns, or registral licences and notice certificates. To oblige the parties to 173,510 marriages less (only by 19 special licences and 19,298 common Church licences) to find two oath-takers for every marriage, would introduce more profanation of holy things than the worst enormities of the custom house and excise offices. It is out of the question. And why should this fraction of Church licence marriages be burdened with the canonical severities which belong to no other system of prevenients? Our present bishops did not impose those oaths, and I believe they would readily forego these solemn appeals to God, not only for the sake of uniformity, but from a conviction that they are not necessary, and if not necessary then that they are unhallowed. I for one do not consider an oath wrong in so solemn a matter as that of holy matrimony; but these oaths do not relate to the solemnities of the marriage bond, but only to some introductory secular inquiries. The Anglican marriage service is one continued oath; and the adjuration at the commencement is expressed in more awful words than "So help you God." There would therefore be nothing sacred to give up in the substitution of declarations for oaths in the depositions. If this preliminary—I will not call it sacrifice—were yielded, there would

be no obstacle to the amalgamation of Church licence depositions with those for banns. The 15 days for licences and the seven for banns, would not oppose, but cohere with, the proposed regulations. The registrar has 15 prevenient days for his licences and three weeks after for notices, because licences take effect immediately, and notices require an after probation. The analogy applies to episcopal licences and banns.

Supposing then the depositions for Church licences and banns consolidated, there remains only the matter of registral licences and notice certificates. It certainly would be satisfactory to individuals, and honourable to the consistency of our laws, if all persons contemplating matrimony knew that they should have the same previous depositions to make, whether they sought entrance by episcopal licences, or by banns, or by registral licences, or notices. And what is there to prevent this happy consummation?

First, there are a few averments in which I do not think that the Church would coincide with the registrars. But they are not matters which the registrars could not consistently yield; and, therefore, though each party might prefer its own plan, the small minority might reasonably yield to the great majority. I am not sure that the registrars would not themselves be quite as well satisfied with the simple questions proposed for banns as with their own forms. I speak of the registrars only for convenience to distinguish the Church system from the non-church system; but the registrars are not themselves responsible, as they only carry out the directions of the Legislature.

I have already mentioned under the second head of this memorial why the Church would not approve of requiring a deposition, amounting to an oath, of "rank and profession" as a prevenient to banns, or whatever stands in their place. After marriage it forms an entry in the register; but what, to take the pattern case in the registral schedule, has the liberty of "James Smith, widower, 25 years "of age, dwelling in High Street, Hendon, Middlesex, "seven days" to marry, to do with his being, as the register requires him to certify by a declaration equivalent to an oath, an "ironmonger." If the preceding heads were filled up as they would be in the proposed banns book, he would have a right to marry whether he were an "ironmonger," or a "cheesemonger," or no "monger" at all. If it is only for specification, it is precisely the specification which no man has a right to require for the nuptial contract. It would be as germane to demand for identification his stature, or the colour of his hair. If it be said that this inquisitorial deposition is necessary for non-church marriages, then so much the worse for non-church marriages. Banns do not require it; nor would twenty millions of Englishmen submit to it. Any man who had deposed what James Smith had deposed had a right to be married without the public prying into his private affairs. In the Church we are dismantling our large dog-in-the-manger pews, and we wish for no distinctions in the house of God of civil "rank or profession," except as every right-minded man feels pleasure in "rendering to all their dues; honour "to whom honour;" "in honour preferring one another." Blackstone says, "The first distinction between the Church "and the law is that the Church affirms that marriage is "God's holy ordinance, a state instituted by God; the "law considers it a civil contract." The registral law considers it merely a civil contract, and therefore the specification of "ironmonger" is proper; but it is not a prerequisite to "God's holy ordinance." I do not suppose that this distinction was for one moment thought of in the registral schedule; but after the contests respecting "conscience clauses" and "Godless education," a tenacity for the retention of "rank or profession" might prevent any consolidated form, and there would be no sacrifice in giving it up.

Again, the registral law requires an applicant in Form No. 1 to declare, without any modifying words, "I am "not a minor under the age of twenty-one years, and "*the other party is not a minor under the age of twenty-one* "*years.*" This, so far as I know, is a novel and, I think, a very unfit requisition. I find no such form in any canon or previous statute. Each party may perhaps declare this for himself or herself from probable information; though not always correctly. Thus George Stephenson, the engineer, thought his son, the late Robert, was born November 16, 1803; and the great Birmingham railroad banquet in Robert's honour was accordingly held on that day of the month. Robert afterwards discovered that his birthday was December 16. By the Hardwicke Act, had November 16 been the right day, and he married November 17, 1824, his father's consent would not have been required, either for banns or licence; but if the day of his birth turned out, as it did, to be December 16, the marriage by banns would have been good, because his father did not forbid the banns; but if by licence, null, and his wife declared a lewd woman, and his children illegitimate, because his father's consent was not given, not being known to be necessary. The law is amended, but the anecdote shows that a man may not always know his own age to a day. But to declare, without if or but, that "the other party," if her age hovers about twenty-one years, is not a day under that period, is more than any person, especially among the illiterate classes of society, ought to be required to depose. My proposed banns book only says "to the best of your belief;" and that only each party for himself or herself, not for "the other "party;" subject to the penalties for perjury on proof of wilful falsification.

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So again, the registral form of attestation, besides being prolix, and to uneducated persons unintelligible, involves what in most instances must be a tissue of falsehoods. Does the registrar really ask the deponent, "Did you "make the foregoing declarations . . . . . pursuant to "the provisions of an Act passed in the Session of Par- "liament holden in the Nineteenth and Twentieth Years "of Her Majesty Queen Victoria, Chapter One hundred "and nineteen, intituled 'An Act to amend the provisions "'of the Marriage and Registration Acts,' and did you "do so 'well knowing' the provisions of the said Act, and "of the several Acts therein recited: I say, well knowing "that every person who shall knowingly or wilfully make "and sign or subscribe any false declaration, or who shall "sign any false notice, for the purpose of procuring any "marriage under the provisions of the said Act above- "mentioned, or any of the several Acts therein recited, "shall suffer the penalties of perjury?"

The only reasonable answer would be: "I did what "you told me; and I knew I should catch it if I told "lies." Why not then get rid of this technical rigmarole, and ask the questions simply and plainly, and make the party, after being told the penalties of wilful falsification, subscribe his or her name, with a witness, to "My decla- "rations, as above, are true." What more than this does the registrar gain after all his references to titles, dates, and sections, of Acts of Parliament?

A few alterations, to the effect of the above suggestions, would bring the registral forms (*mutatis mutandis*) into correspondence with the proposed depositions for banns, which being the largely preponderating class of prevenients, ought not to give way to the novel provisions of the registration statutes.

But the registral forms would have further to be simplified before they could assimilate with banns. They are minutely, and I think needlessly, prolix. The Registrar-General and his staff are not to be blamed for this. The system was novel; agents were to be trained to new duties; the Acts of Parliament several times changed various details of action; and a superfluity of caution was required in consequence of the general belief that the new system would open the way to innumerable clandestine marriages. The Registrar-General was thus forced to fence round his enclosure, taken from a wide common, with a bristling pallisade of formalities. It would be impossible, and would be unnecessary, to introduce these minute details, legal and practical, into our parishes for daily wear and tear in the matter of banns. The registral officers, specially appointed to this work, may master these administrative observances; but the clergy have other duties to attend to, and the mass of the people ask for something short and simple. I see no reason why the registral depositions should not be as simple as my proposed banns questions. The system is now established, and may forego some of its early complexities; just as Mulready's elaborate vignette, which was at first considered necessary to prevent the abuse of cheap postage, yielded to that simple never-forged stamp, which has made known throughout the world the lineaments of our gracious and beloved Queen.

The Registrar-General himself is evidently open to this argument; for I find him saying in his book of "Sup- "plementary Regulations," that the form of licence for marriage, 19 & 20 Vict. c. 119, "is more simple than "that of 6 & 7 Will. IV. c. 85., which it supersedes." There is still room for superseding and simplifying.

The elaborate tractate which I have just referred to of "Supplementary regulations and practical directions for "the duties of superintendent registrars, and of registrars "of marriages, and their respective deputies," will illustrate my remarks. I will not venture to touch the immense mass of previous "Regulations and practical directions" to which this tractate of 75 closely-printed octavo pages is "supplementary." Nor will I say more of the supplement itself, than that it contains, *inter alia*, regulations; and regulations of former regulations; and regulations of the former regulations of anterior regulations. And even yet,

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with all these elaborate explanations of explanations, the unfortunate superintendent registrars and registrars cannot, be sure that they see daylight; and therefore, says the Registrar-General (page 5), "They are requested to study "carefully the Act of 3 & 4 Vict. c. 72., so as to make them- "selves thoroughly acquainted with its various provisions, "not relying solely upon the following exposition of it, which "has been prepared for their greater convenience." And when all this study has been gone through, there is some difficulty in reducing theory to practice. Thus, one of the notices (as per last Act above mentioned) is to state the "*usual place of worship* of one of the parties," and that it is not "more than two miles distant beyond the limits "of the district;" but "If the superintendent *actually* "*knows* that either in the above, or any other particular "the notice is false, it will be his duty to reject it alto- "gether." It is an awkward responsibility in this age of religious vagrancy for a registral superintendent to affirm that he "actually knows," among a score places of divine worship, that an applicant's "usual place" is Bethel chapel and not Bethesda; and a magistrate refuses to "know"—whatever he may believe—whether a cabman or his customer is right about a few yards of distance till he has sent a policeman with a pedometer.

In justice to my argument I will insert two, the first and the second, of the registral forms, which refer only to *the initial* stage of the process. There are other forms and entries as the affair advances; but these may suffice as a specimen. I believe that they might be much simplified; but, till they are, amalgamation with banns is impossible.

FORM No. 1. NOTICE OF MARRIAGE.—(*Pursuant to the Statute of* 19 *&* 20 *Vict., Chapter* 119.)

[For Persons both of whom are of Full Age.]

Directions for filling up this Notice.

(a) *Insert in this blank the word "by" or "without" (as the case may be).*

To the Superintendent Registrar of the District of in the Count of .

I, the undersigned hereby give you Notice, That a marriage is intended to be had (*a*) Licence, within Three Calendar Months from the date hereof, between me and the other party herein named and described; (that is to say,)

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.

(b) "*I*," "*she*," "*he*," or "*both of us*" (*as the case may be*).

(c) *If the marriage is to be* without Licence, *and* both *the Parties reside within the same District*, both names *must be here inserted.*

(d) *If* by *Licence, insert* "*Fifteen*;" *if* without *Licence*, "*Seven.*"

(e) "*My*," "*her*," "*his*," or "*our*," (*as the case may be*).

(f) *If the Marriage is to be had in a Church or Chapel of the Church of England, insert in this space* "*in the Parish of* " or "*in the Ecclesiastical District of* " (*as the case may be*), *and add the name of the Parish or Ecclesiastical District in which one or both of the parties dwell; but if the Marriage is not to be according to the rites of the Church of England, leave the space* (*f*) *blank.*

And I hereby solemnly declare, That I believe there is no impediment of kindred or alliance or other lawful hindrance to the said Marriage; and that (*b*) the above-named (*c*) ha for the space of (*d*) days immediately preceding the giving of this notice had (*e*) usual place of abode and residence (*f*) within the above-mentioned District of .

And I further declare, That I am not a Minor under the age of Twenty-one years, and that the other party herein named and described is not a Minor under the age of Twenty-one years.

And I make the foregoing declarations solemnly and deliberately, conscientiously believing the same to be true, pursuant to the provisions of an Act passed in the Session of Parliament holden in the Nineteenth and Twentieth years of Her Majesty Queen Victoria, Chapter One hundred and nineteen, intituled "An Act to amend the provisions of the Marriage and Registration Acts," well knowing that every person who shall knowingly or wilfully make and sign or subscribe any false Declaration, or who shall sign any false Notice, for the purpose of procuring any Marriage under the provisions of the said Act above mentioned, or any of the several Acts therein recited, shall suffer the penalties of perjury.

In witness whereof I have hereunto set and subscribed my hand this day of 18 .

Signed and declared by the above-named in the presence of

(g) *Superintendent Registrar, Deputy Superintendent Registrar, Registrar of Births and Deaths, Registrar of Marriages, Deputy Registrar of Births and Deaths, or Deputy Registrar of Marriages* (*as the case may be*).

(Witness's)
Name - - -
Description (*g*) - -
Place of Abode - -

in and for the District of

MEMORANDUM.

Persons desirous of marrying under the provisions of the Act of 19 & 20 Vict. c. 119., in a registered building, or in a church or chapel of the Established Church, are hereby reminded that by the eleventh section of that statute it is provided that no Marriage shall be solemnized in any registered *Dissenting* place of worship *without the consent of the minister, or of one of the trustees, owners, deacons, or managers thereof*; nor in any registered building of the Church of Rome, nor in any church or chapel of the Church of England, *without the consent of the minister thereof*; it therefore behoves every person before giving notice to the Superintendent Registrar, to ascertain that such consent will be granted.

FORM No. 2. NOTICE OF MARRIAGE.—(*Pursuant to the Statute of* 19 & 20 *Vict., Chapter* 119.

The Rev. S. C. Wilks, M.A.

[For Persons either of whom is a Minor.]

Directions for filling up this Notice.

(a) *Insert in this blank the word "by" or "without" (as the case may be).*

To the Superintendent Registrar of the District of in the County of

I, the undersigned hereby give you Notice, That a Marriage is intended to be had (*a*) Licence, within Three Calendar Months from the date hereof, between me and the other party herein named and described ; (that is to say,)

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.

(b) "*I*," "*she*," "*he*," *or* "*both of us*" (*as the case may be*).

(c) *If the Marriage is to be* without Licence, *and* both *the parties reside within the same District*, both names *must be here inserted.*

(d) *If* by *Licence, insert* "*Fifteen;*" *if* without *Licence*, "*Seven.*"

(e) "*My*," "*her*," "*his*," *or* "*our*," (*as the case may be*).

(f) *If the Marriage is to be had in a Church or Chapel of the Church of England, insert in this space* "*in the Parish of* " *or* "*in the Ecclesiastical District of* " (*as the case may be*), *and add the name of the Parish or Ecclesiastical District in which one or both of the parties dwell; but if the Marriage is not to be according to the rites of the Church of England, leave the space* (*f*) *blank.*

(g) *Directions for filling up this Declaration are contained on the other side.*

And I hereby solemnly declare, That I believe there is no impediment or hindrance of kindred or alliance, or other lawful hindrance, to the said Marriage ; and that (*b*) the above-named (*c*) ha for the space of (*d*) day immediately preceding the giving of this notice had (*e*) within the above-mentioned District of .

And I further declare (*g*)

And I make the foregoing Declarations solemnly and deliberately, conscientiously believing the same to be true, pursuant to the provisions of an Act passed in the Session of Parliament holden in the Nineteenth and Twentieth years of Her Majesty Queen Victoria, Chapter One hundred and nineteen, intituled "An Act to amend the provisions of the Marriage and Registration Acts," well knowing that every person who shall knowingly or wilfully make and sign or subscribe any false Declaration, or who shall sign any false Notice, for the purpose of procuring any Marriage under the provisions of the said Act above mentioned, or any of the several Acts therein recited, shall suffer the penalties of perjury.

In witness whereof I have hereunto set and subscribed my hand this day of 18 .

Signed and declared by the above-named
in the presence of

(Witness's)
Name - - -
Description (*h*) - -
in and for the District of
Place of Abode - -

(*h*) *Superintendent Registrar, Deputy Superintendent Registrar, Registrar of Births and Deaths, Registrar of Marriages, Deputy Registrar of Births and Deaths, or Deputy Registrar of Marriages* (*as the case may be*).

DIRECTIONS for filling up the DECLARATIONS in the BLANK (*g*) as to MINORITY and CONSENT.

[*If the parties are both Minors, and neither of them has been previously married, consent as to both* (*if there be any person competent to give it*) *will be required, in which case the blank* (*g*) *should be filled up as follows :*]

And I further declare, That I and the said not being either of us a widower or widow, are both minors, under the age of 21 years ; and that the consent of and whose consent to our Marriage is required by law, has been duly given and obtained thereto.

[*If, however, the parties are* both *Minors and consent is required only as to one of them, insert as above down to and including the words* "*21 years,*" *and then add as follows :*]—

And that the consent of whose consent to the Marriage of the said is required by law, has been duly given and obtained thereto ; and that as to the said there is no person whose consent to Marriage is by law required.

[*If only* one *of the parties be a Minor and had not been previously married, and there be a person competent to give consent to his or her Marriage, fill up the blank* (*g*) *thus :*]—

And I further declare, That the said not being a widow , a minor under the age of 21 years ; and that the consent of whose consent to Marriage is required by law, has been given and obtained thereto.

[*If, however, there be no person competent to give consent, insert after the words* "*21 years*" *as follows :*]—

And that there is no person whose consent to Marriage is by law required.

MEMORANDUM.

Persons desirous of marrying under the provisions of the Act of 19 & 20 Vict. c. 119 in a registered building, or in a church or chapel of the Established Church, are hereby reminded that by the eleventh section of that statute it is provided that no Marriage shall be solemnized in any registered Dissenting place of worship without the consent of the minister, or of one of the trustees, owners, deacons, or managers thereof ; nor in any registered building of the Church of Rome, nor in any church or chapel of the Church of England, without the consent of the minister thereof ; it therefore behoves every person, before giving notice to the Superintendent Registrar to ascertain that such consent will be granted.

The Rev. S. C. Wilks, M.A.

What appears to me to be the chief cause of the prolixity of the registral documents is their blending the information which is requisite for their own officers with what alone is needful to be known by the public. It matters not to Jonas and Jemima under what statute this or that deposition is directed, nor is it necessary even for the lower class officers of the registral staff to be deeply versed in the matter. Let a table of short questions be made which shall embrace all that is required to be asked, and let the registral officers have a key to that table telling them what to do, but without any technical language or reasoning upon the matter. I believe that a very few pages would sufficiently instruct a registrar in his duty. To go no farther than the two forms which I have inserted, there is no more reason for two elaborate forms than for Sir Isaac Newton's two holes, one for his cat and the other for his kitten.

To show further the need of the amalgamation of preliminary depositions, I may add that the present system of lax depositions for banns and strict ones for registral notices satisfies neither conformists nor nonconformists. Nonconformists complain that Church laxity, opposed to non-church strictness, attracts their boys and girls to banns. Churchmen say that they have no wish to be fautors of clandestine marriages, and that when Parliament gave stringent depositions for registral purposes, it ought to have protected our national altars by similar checks.

If amalgamation so far can be effected, it might go farther. It has been decided by law, and I think wisely, that the authorities of no place where marriages may be lawfully solemnized shall be obliged to act upon a registrar's certificate. The result is that the applicant must procure permission from those authorities before he goes to the registrar. Those authorities may require what depositions or pledges they please. A clergyman, for instance, may say that he will not marry any man with a registral certificate unless he promises to attend the holy communion and teach his children the Church catechism. Other bodies also may make their own regulations, and he must either submit to them or repair to the "Godless" registral office. Now if a very simple and approved set of queries for banns were in use, it might possibly be voluntarily agreed, for the general good—say by the Wesleyan Methodists, the Congregational Dissenters, and others—that while they will not sacrifice the right of examination of those who seek their religious offices, they would restrict the preliminary depositions to those inquiries, and thereupon officiate without relegating the applicants to "Godless" marriages.

Other considerations occur to me, but I have been too prolix already, a fault incident to 77 years of age. Apologising for it,

I have the honour to be, &c.

Archbishop Cullen, and Bishops E. Walsh, James Walshe, and Furlong.

No. 25.—The Most Rev. PAUL CULLEN, D.D., Roman Catholic Archbishop, and the Right Revs. E. WALSH, D.D., JAMES WALSHE, D.D., and THOMAS FURLONG, D.D., Roman Catholic Bishops in Ireland.

MY LORD, Dublin, 16th November 1865.

I HAVE the honour to forward to your Lordship the accompanying printed letter, prepared by the Roman Catholic prelates of the ecclesiastical province of Dublin, as their reply to the queries regarding marriage which were addressed to them some time ago on the part of the Royal Commission appointed to inquire into and to report on the state of the marriage laws in the United Kingdom.

AS their letter is very long, the above-mentioned prelates got it printed, considering that it would be more convenient to the Commissioners to read it in its present shape than in manuscript. Each, however, of the prelates has attached his signature to the printed document.

I have, &c.
PAUL CULLEN.

To the Right Hon. Lord Chelmsford,
&c. &c. &c.

MY LORD, Dublin, 8th November 1865.

THE undersigned Roman Catholic prelates of the ecclesiastical province of Dublin, having in a private conference carefully examined the queries regarding marriage addressed to them on the part of the Royal Commission appointed some time ago to inquire into and to report on the state of the marriage laws in the United Kingdom, have the honour to submit, in the present letter, their answer to those queries, requesting of your Lordship to present it to the Commissioners.

In preparing their reply, the prelates have considered it necessary to explain at some length the nature and attributes of marriage according to Catholic teaching, in order that the Commissioners might have before them an exposition of the doctrines which the undersigned cannot abandon without putting themselves in opposition to their Church, and sacrificing conscience.

The doctrinal explanations which the prelates present are of an authoritative character, and exclude everything merely polemical or doubtful, being taken from the canons of the Council of Trent, the decisions of the Popes, and the Catechism of the Council of Trent, a work of great merit, and approved for the use of Catholic teaching by the Holy See.

Following the course marked out in your Lordship's letter, the prelates will briefly explain their views: 1stly, on the constitution of marriage, religious and secular; 2ndly, its proofs; 3rdly, its registration; 4thly, the operation of the present legislation on marriage.

The prelates trust that the observations they are about to make will help to show what course future legislation should follow, and what changes should be made in existing laws, in order to meet the exigencies of Her Majesty's Catholic subjects, and to remove any liabilities affecting the rights of conscience to which they may be subject in regard to marriage.

On the Constitution of the Marriage Contract.

2. On this matter two questions arise: one, as to the constitution of marriage, according to the teaching of the Catholic Church; the other, as to what opinion we are to hold regarding those contracts commonly called *civil marriages*.

The following definition of marriage, given in a late official document published for the ecclesiastical tribunals of the Austrian empire, by the Archbishop of Vienna, expresses very fully the views of Catholics regarding the constitution of marriage:* "Matri-
" monium est conjunctio maris et feminæ ad propaga-
" tionem humani generis et mutuum adjutorium, Dei
" voluntate ordinata: quod cum in ipsis ejus primordiis
" indissolubile esset institutum et eam accepisset legem
" ut conjuges duo essent in carne una, a Christo Domino
" ad pristinam dignitatem reductum, et in Sacramentum
" Novæ Legis evectum est."

3. But the teaching of Catholics as to the nature or constitution of this sacrament, is laid down in a more authoritative manner in the Catechism of the Council of Trent, from which we shall give several extracts that will serve to place before us everything essential to marriage and necessary to constitute it. Explaining in what matrimony consists, this standard work of Catholic doctrine says:†—

"Matrimony, in the general opinion of divines, is
" defined 'The conjugal union (conjunctio) which is
" 'to last during life of a man and a woman who can
" 'legitimately contract.' In order that the parts of
" this definition may be the better understood, it must
" be observed that although a perfect marriage has all
" these conditions, viz., internal consent, external agree-
" ment expressed by words, the obligation and tie which
" arise from the contract, and the marriage debt by
" which it is consummated; yet the obligation and tie,
" expressed by the word 'union,' alone have properly
" the force and nature of marriage. The peculiar
" character of this union is marked by the word 'con-
" 'jugal,' distinguishing it from other contracts, by
" which men and women unite to promote their common
" interests, for payment or some other reason, which
" contracts differ essentially from this conjugal 'union.'
" Next follow the words 'inter legitimas personas;'
" for persons altogether excluded by law cannot con-
" tract marriage, and if they do, their marriage is
" invalid. Persons, for instance, within the fourth
" degree of kindred, a boy before his fourteenth year,
" and a girl before her twelfth, the ages established by
" the laws, cannot be fit to contract marriage. The
" words 'which is to last during life' express the indis-
" solubility of the tie which binds husband and wife."‡

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* "Instructio pro Judiciis Ecclesiasticis Imperii Austriaci, quoad causas Matrimoniales."

† As the Catechism of the Council of Trent is an authorized exposition of Catholic doctrine, we give the passages quoted from it in the original Latin, so that if any inaccuracies appear in the translation (which is taken, in substance, from that of Rev. J. Donovan, Professor of Maynooth), they may easily be corrected.

‡ "Ita vero ex communi theologorum sententia definitur: *Matrimonium est viri et mulieris maritalis conjunctio inter legitimas personas, individuam vitæ consuetudinem retinens.* Cujus definitionis partes ut planius intelligantur, docendum est, quamvis hæc omnia

4. From the doctrine thus laid down, the Catechism proceeds to infer, in the next paragraph, that the nature and constitution of marriage consists in the indissoluble bond, or *vinculum*, by which the husband and wife are united, whilst the consent given by the parties, when contracting, is the efficient cause :—

" Hence, it is evident, that in that bond (vinculum) " consists the force and nature of marriage. Some " eminent divines, it is true, say that it consists in the " consent, as when they define it: 'The consent of the " 'man and woman;' but we are to understand them to " mean that the consent is the efficient cause of mar- " riage, which is the doctrine of the Fathers of the " Council of Florence; because, without the consent " and agreement, the obligation and tie cannot possibly " come into existence."*

5. The nature of the consent necessary to constitute a marriage, and the way in which that consent is to be given, is thus explained :—

" It is of absolute necessity that the consent be ex- " pressed in words which designate the present time. " Marriage is not a simple donation but a mutual " contract; and therefore the consent of one of the " parties is insufficient, that of both necessary to its " validity; and to declare this consent, words are " obviously the medium to be employed. If the internal " consent alone, without any external indication, were " sufficient, it would then seem to follow, as a necessary " consequence, that were two persons, living in the " most remote and distant courtries, to consent to " marry, they would contract a true and indissoluble " marriage, even before they had mutually signified to " each other their consent by letter or messenger; a " consequence as repugnant to reason as it is opposed to " the decrees and established usage of the Church."†

Having laid down this doctrine, the Catechism adds that a " nod or other unequivocal sign may be sufficient " for marriage."

6. We are next instructed that marriage may be considered under two different aspects, viz., as an institution of nature, and as a Christian sacrament :—

" Having explained these matters, it must be taught " that matrimony is to be considered in two points of " view, either as a natural union (marriage was origi- " nated not by man but by nature), or as a sacrament, " the efficacy of which transcends the order of nature; " and as grace perfects nature ('That was not first " 'which is spiritual, but that which is natural; after- " 'wards that which is spiritual'), the order of our " matter requires that we first treat of matrimony as it " is constituted by nature, and has relation to an office " of nature, and next as a sacrament."‡

7. That marriage, as an office of nature, derives its origin from God, and not from any human legislation, is next demonstrated :— Archbishop Cullen, and Bishops E. Walsh, James Walshe, and Furlong.

" The faithful, therefore, are to be taught, in the " first place, that marriage was instituted by God. We " read in Genesis, that 'God created them male and " 'female, and blessed them, saying: "Increase and " 'multiply;"' and also: 'It is not good for man to " 'be alone: let us make him a help like unto himself. " 'Then the Lord God cast a deep sleep upon Adam: " 'and when he was fast asleep he took one of his ribs, " 'and filled up flesh for it. And the Lord God built " 'the rib which he took from Adam into a woman, and " 'brought her to Adam; and Adam said: this is now " 'bone of my bones, and flesh of my flesh; she shall " 'be called woman, because she was taken out of man: " 'wherefore a man shall leave father and mother, and " 'shall cleave to his wife; and they shall be two in " 'one flesh.' These words, according to the authority " of our Lord himself, as we read in St. Matthew, " establish the divine institution of matrimony."§

8. From the doctrines laid down in the paragraphs just quoted, the consequence naturally follows that marriage is indissoluble, and that no power on earth can grant a divorce, properly so called; so that a man, though separated from his wife, cannot validly marry any other woman, as long as the wife, to which he was first married, is alive :—

" Not only did God institute marriage; he also, as " the Council of Trent declares, rendered it perpetual " and indissoluble: 'what God hath joined together,' " says our Lord, 'let not man separate.' As a natural " contract, it accords with the duties of marriage that " it be indissoluble; yet its indissolubility arises prin- " cipally from its nature as a sacrament; and this it " is that, in all its natural relations, elevates it to the " highest perfection. That its bond should be disso- " luble, moreover, is opposed both to the proper edu- " cation of children, and to the other advantages of " marriage."‖

9. How the indissoluble and natural contract of marriage was raised, by our Divine Lord, to the dignity of a sacrament, is thus explained :—

" As a sacrament, it is to be observed, marriage is " raised to a superior order, and referred to a more " exalted end. For as the original institution of mar- " riage, as a natural contract, had for its object the " propagation of the human race; so its subsequent " elevation to the dignity of a sacrament was intended " for the procreation and education of a people in the " religion and worship of the true God, and of our " Lord Jesus Christ. When the Redeemer would ex- " emplify the close union that subsists between himself " and his Church, and his boundless love towards us, " he declares this divine mystery principally by allud- " ing to the holy union of man and wife; and the apti- " tude of the illustration is evinced by this, that of all " human relations no one is so binding as that of mar- " riage, and those who stand in that relation are united " in the closest bonds of affection and love. Hence, " the Sacred Scriptures, assimilating it to marriage, " frequently place before us this divine union of Christ " with his Church.

" That marriage is a sacrament has been at all times " held by the Church as a certain and well-ascertained " truth; and in this she is supported by the authority

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in perfecto matrimonio insint, consensus videlicet interior, pactio externa verbis expressa; obligatio, et vinculum, quod ex ea pactione efficitur, et conjugum copulatio, qua matrimonium consummatur; nihil horum tamen matrimonii vim et rationem proprie habere, nisi obligationem illam, et nexum, qui *conjunctionis* vocabulo significatus est. Additur vero, *maritalis*, quoniam alia pactionum genera, quibus viri et mulieres obligantur, ut sibi mutuam operam præstent, vel pretii vel alterius rei causa, prorsus aliena sunt a matrimonii ratione. Sequitur deinde, *inter legitimas personas*; quoniam qui a nuptiarum conjunctione legibus omnino exclusi sunt, ii matrimonium inire non possunt, neque, si ineant, ratum est. Exempli gratia, qui intra quartum gradum propinquitate conjuncti sunt, puerque ante decimum quartum annum, aut puella ante duodecimum, quæ ætas legibus constituta est, ad matrimonii justa fœdera ineunda apti esse non possunt. Quod vero extremo loco positum est, *individuam vitæ consuetudinem retinens*, indissolubilis vinculi naturam declarat, quo vir et uxor colligantur."—*Cat. Rom.* p. II., c. viii. paragr. 3.

* " Ex his igitur patet, matrimonii naturam et rationem in vinculo illo consistere. Nam quod aliæ clarissimorum virorum definitiones hoc videntur consensui tribuere, ut cum dicunt, conjugium esse consensum maris et feminæ; hoc ita accipiendum est, consensum ipsum matrimonii causam effectricem esse, quod patres in Concilio Florentino docuerunt. Etenim obligatio, et nexus oriri non potest, nisi ex consensu et pactione."—*Ib.* par. 4.

† " Sed illud maxime necessarium est, ut consensus verbis, quæ præsens tempus significant, exprimatur. Neque enim matrimonium est simplex donatio, sed mutua pactio. Atque ita fit, ut consensus alterius tantum, ad matrimonium conjungendum satis esse non possit, sed duorum inter se mutuum esse oporteat; atqui ad declarandum mutuum animi consensum, verbis opus esse perspicuum est. Si enim ex interiori tantum consensu, sine aliqua externa significatione, matrimonium constare posset, illud etiam sequi videretur, ut cum duo, qui disjunctissimis et maxime diversis in locis essent, ad nuptias consentirent, antequam alter alteri voluntatem suam vel litteris, vel nunciis declarasset, veri et stabilis matrimonii lege conjungerentur; quod tamen a ratione, et sanctæ ecclesiæ consuetudine et decretis alienum est."—*Ib.* par 5.

‡ " Jam vero hisce explicatis, illud docendumerit, matrimonium duplicem rationem habere. Nam, vel ut naturalis conjunctio (conjugium enim non ab hominibus inventum, sed a natura), vel ut sacramentum, cujus vis naturalium rerum conditionem superat, considerandum est. Ac, quoniam gratia naturam perficit (neque *prius*, id *quod spirituale est, sed quod animale, deinde quod spirituale*) rei ordo postulat, ut de matrimonio, ut natura constat et ad naturæ officium pertinet, prius agendum sit; tum vero, quæ illi, ut sacramentum est, conveniunt, explananda erunt."—*Ib.* par. 9.

§ " In primis itaque docendi sunt fideles, matrimonium a Deo institutum esse. Scriptum est enim in Genesi: *Masculum et feminam creavit eos: benedixitque illis Deus, et ait: Crescite, et multiplicamini*; et: *Non est bonum esse hominem solum: faciamus ei adjutorium simile sibi*; ac paulo post: *Adæ vero non inveniebatur adjutor similis ejus. Immisit ergo Dóminus Deus soporem in Adam; cumque obdormisset, tulit unam de costis ejus, et replevit carnem pro ea: et ædificavit Dominus Deus costam, quam tulerat de Adam, in mulierem, et adduxit eam ad Adam, dixitque Adam: hoc nunc os ex ossibus meis, et caro de carne mea; hæc vocabitur virago, quoniam de viro sumpta est. Quamobrem relinquet homo patrem suum et matrem, et adhærebit uxori suæ, et erunt duo in carne una.* Quæ, ipso Domino auctore apud Sanctum Matthæum, ostendunt matrimonium divinitus institutum esse."—*Ib.* par. 10.

‖ " Neque vero Deus matrimonium tantummodo instituit, verum, ut sancta Tridentina Synodus declarat, perpetuum etiam et indissolubilem nodum et addidit. Siquidem Salvator ait: *Quod Deus conjunxit, homo non separet.* Quamvis enim matrimonio, quatenus naturæ est officium, conveniat, ut dissolvi non possit, tamen id maxime fit, quatenus est sacramentum; qua ex re etiam in omnibus, quæ naturæ lege ejus propria sunt, summam perfectionem consequitur: tamen et prolis educandæ studio, et aliis matrimonii bonis repugnat, ut ejus vinculum dissolubile sit."—*Ib.* par. 11.

Archbishop Cullen, and Bishops E. Walsh, James Walshe, and Furlong.

" of the Apostle in his Epistle to the Ephesians: " ' Husbands,' says he ' should love their wives, as their " ' own bodies: he who loveth his wife, loveth himself, " ' for no man ever hated his own flesh, but nourisheth " ' and cherisheth it, even as Christ doth the Church, " ' for we are members of his body, of his flesh, and of " ' his bones. For this cause shall a man leave his " ' father and mother, and shall cleave to his wife, and " ' they shall be two in one flesh. This is a great sa- " ' crament, but I speak in Christ and in the Church. " When the Apostle says: ' This is a great sacrament,' " he means, no doubt, to designate marriage; as if he " had said: The conjugal union between man and wife, " of which God is the author, is a sacrament, that is, " a sacred sign of the most holy union that subsists " between Christ and his Church. That this is the true " meaning of those words is shown by the ancient Holy " Fathers who have interpreted the passage; and the " Council of Trent has given to it the same interpretation. " The husband, therefore, is evidently compared by the " Apostle to Christ, the wife to the Church; ' the man " ' is head of the woman, as Christ is of the Church;' " and hence the husband should love his wife, and " again, the wife should love and respect her husband, " for, ' Christ loved his Church, and gave himself for " ' her;' and the Church, as the same Apostle teaches, " is subject to Christ."

" That this sacrament signifies and confers grace, " and in this the nature of a sacrament principally " consists, we learn from these words of the Council " of Trent: ' The grace which perfects that natural " ' love, and confirms that indissoluble union, Christ " ' himself, the author and finisher of the sacraments, " ' has merited for us by his passion.' The faithful " are, therefore, to be taught that, united in the " bonds of mutual love, the husband and wife are " enabled, by the grace of this sacrament, to repose " in each other's affections; to reject every criminal " attachment; to repel every inclination to unlawful " intercourse; and, in everything to preserve ' mar- " ' riage honourable and the bed undefiled.' "*

10. In the course of ages abuses, indeed, arose from the weakness and corruption of man, in regard to marriage; but our divine Lord, when he came to teach the world, restored things to their original purity:—

" Moreover, whether we consider the law of nature " after the fall of Adam, or the law given to Moses, " we at once perceive that marriage had fallen from " its primitive honour and dignity. Under the Law " of nature we find that many of the patriarchs had " several wives at the same time; and, in the law of " Moyses, should a cause exist, it was subsequently " permitted to dismiss one's wife, having given her " a bill of divorce; both of which practices have been " removed by the Gospel dispensation, and marriage " restored to its primitive state.

" That polygamy is opposed to the nature of mar- " riage is shown by our Lord in these words: ' For " ' this cause a man shall leave father and mother, and " ' cleave to his wife, and they two shall be in one " ' flesh. Therefore,' continues the Redeemer, ' now " ' they are not two but one flesh.' The patriarchs, " who, by permission of God, had a plurality of wives, " are not on that account to be condemned; but the " words of the Redeemer clearly show that marriage " was instituted by God as the union of two only; and " this he again expressly declares when he says: " ' Whoever shall dismiss his wife, and shall marry " ' another, doth commit adultery, and he that shall " ' marry her that is dismissed committeth adultery.' " If a plurality of wives be lawful, we can discover no " more reason why he who marries a second wife, " whilst he retains the first, should be guilty of " adultery, than he who, having dismissed the first, " takes to himself a second. Hence, if an infidel, in " accordance with the laws and customs of his country, " has married several wives, the Church commands " him, when converted to the faith, to look upon the " first alone as his lawful wife, and to separate from " the others."*

11. The indissolubility of marriage is established by the following arguments, taken from the Holy Scripture:—

" That marriage cannot be dissolved by divorce is " easily proved from the same testimony of our Lord: " if by a bill of divorce the matrimonial link were dis- " solved, the wife might lawfully, and without the " guilt of adultery, take another husband; yet, our " Lord expressly declares, that ' whoever shall dismiss " ' his wife, and marry another, committeth adultery.' " The bond of marriage, therefore, can be dissolved by " death alone, and this the Apostle confirms when he " says: ' A woman is bound by the law as long as her " ' husband liveth; but if her husband die, she is at " ' liberty: let her marry whom she will only in the " ' Lord.' And again: ' To them that are married, " ' not I, but the Lord commandeth, that the wife " ' depart not from her husband, and if she depart, " ' that she remain unmarried or be reconciled to her " ' husband.' Thus, to her who has separated from " her husband, even for a just cause, the only alter- " native left by the apostle, is to remain unmarried or " to be reconciled to her husband: the Church, unless " influenced by very weighty causes, does not sanction " the separation of husband and wife."†

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* "Ut autem sacramentum est, explicare oportebit, ejus naturam multo præstantiorem esse et omnino ad altiorem finem referri. Quemadmodum enim matrimonium, ut naturalis conjunctio, ad propagandum humanum genus ab initio institutum est: ita deinde, ut populus ad veri Dei et Salvatoris nostri Christi cultum et religionem procrearetur atque educaretur, sacramenti dignitas illi tributa est. Cum enim Christus Dominus vellet arctissimæ illius necessitudinis, quæ ei cum ecclesia intercedit, suæque erga nos immensæ charitatis certum aliquod signum dare, tanti mysterii dignitatem hac potissimum maris et feminæ sancta conjunctione declaravit. Quod quidem aptissime factum esse, intelligi ex eo potest, quod ex omnibus humanis necessitatibus, nulla inter se homines magis, quam matrimonii vinculum constringit, maximaque inter se vir et uxor charitate et benevolentia devincti sunt. Atque idcirco fit, ut frequenter sacræ literæ nuptiarum similitudine divinam hanc Christi et ecclesiæ copulationem nobis ante oculos proponant.

"Jam vero matrimonium sacramentum esse, ecclesia, Apostoli auctoritate confirmata, certum et exploratum semper habuit. Ita enim ad Ephesios scribit: *Viri debent diligere uxores suas, ut corpora sua. Qui suam uxorem diligit, seipsum diligit. Nemo enim umquam carnem suam odio habuit, sed nutrit, et fovet eam, sicut et Christus ecclesiam; quia membra sumus corporis ejus, de carne ejus, et de ossibus ejus. Propter hoc relinquet homo patrem et matrem suam, et adhærebit uxori suæ, et erunt duo in carne una. Sacramentum hoc magnum est: ego autem dico in Christo, et in ecclesia.* Nam quod inquit, *sacramentum hoc magnum est*, nemini dubium esse debet, ad matrimonium referendum esse; quod scilicet viri et mulieris conjunctio, cujus Deus auctor est, sanctissimi illius vinculi, quo Christus Dominus cum ecclesia conjungitur, sacramentum, idest sacrum signum sit.

"Atque hanc esse eorum verborum veram et propriam sententiam, veteres sancti patres, qui eum locum interpretati sunt, ostendunt, idemque sancta Tridentina Synodus explicavit. Constat ergo, virum Christo, uxorem ecclesiæ ab Apostolo comparari; virum esse *caput mulieris, ut est Christus ecclesiæ:* eaque ratione fieri, ut vir uxorem diligere, et vicissim uxor virum amare et colere debeat. *Christus enim dilexit ecclesiam, et pro ea semetipsum tradidit:* rursus vero, quod idem Apostolus docet, *ecclesia subjecta est Christo.* Sed gratiam quoque hoc sacramento significari et tribui, in quo maxime sacramenti ratio inest, ea synodi verba declarant: *Gratiam vero, quæ naturalem illum amorem perficeret et indissolubilem unitatem confirmaret, conjugesque sanctificaret, ipse Christus, venerabilium sacramentorum institutor atque perfector, suo nobis passione promeruit.* Quare docendum est, hujus sacramenti gratia effici, ut vir et uxor mutuæ charitatis vinculo conjuncti, alter in alterius benevolentia conquiescat, alienosque et illicitos amores et concubitus non quærat, sed *in omnibus* sit *honorabile connubium, et orus immaculatus.*"—*Ib.* par. 15, 16, 17.

* "Huc accedit, quod sive naturæ, post peccatum, sive Mosis legem spectemus, facile animadvertimus, matrimonium a primi ortus sui decore et honestate decidisse. Dum enim naturæ lex vigebat, multos ex antiquis patribus fuisse comperimus, qui plures simul uxores ducerent. Deinde vero in lege Mosis, permissum erat, dato repudii libello, si causa fuisset, divortium cum uxore facere: quorum utrumque ab evangelica lege sublatum, matrimoniumque in pristinum statum restitutum est. Nam quod polygamia a matrimonii natura aliena esset (etsi aliqui ex priscis patribus accusandi non sunt, quod non sine Dei indulgentia plures uxores ducerent), Christus Dominus ostendit illis verbis: *Propter hoc dimittet homo patrem et matrem, et adhærebit uxori suæ, et erunt duo in carne una;* ac deinde subjungit: *Itaque jam non sunt duo, sed una caro.* Quibus verbis planum fecit, matrimonium ita a Deo institutum esse, ut duorum tantum, non plurium conjunctione definiretur. Quod etiam alibi apertissime docuit; ait enim: *Quicunque dimiserit uxorem suam, et aliam duxerit, adulterium committit super eam: et si uxor dimiserit virum suum, et alii nupserit, mœchatur.* Nam si viro liceret plures uxores ducere, nulla omnino causa esse videretur, cur magis adulterii reus dicendus esset, quod præter eam uxorem, quam domi haberet, aliam duceret, quam quod, priore dimissa, cum alia conjungeretur. Atque ob eam rem fieri intelligimus, ut, si infidelis quispiam, gentis suæ more et consuetudine, plures uxores duxisset, cum ad veram religionem conversus fuerit, jubeat eum ecclesia ceteras omnes relinquere, ac priorem tantum justæ et legitimæ uxoris loco habere."—*Ib.* par. 19.

† "Verum eodem Christi Domini testimonio facile comprobatur, nullo divortio vinculum matrimonii dissolvi posse. Si enim post libellum repudii mulier a viri lege soluta esset, liceret ei sine ullo adulterii crimine alteri viro nubere. Atqui Dominus aperte denunciat: *Omnis, qui dimittit uxorem suam, et alteram ducit, mœchatur.* Quare conjugii vinculum nulla re, nisi morte, disrumpi perspicuum est. Quod quidem Apostolus etiam confirmat, cum inquit: *Mulier alligata est legi, quanto tempore vir ejus vivit; quod si dormierit vir ejus, liberata est a lege: cui vult, nubat; tantum in Domino;* et rursus: *His, qui in matrimonio juncti sunt, præcipio, non ego, sed Dominus, uxorem a viro non discedere quod si discesserit,*

12. The Scriptural arguments are still further enforced by the evils consequent upon divorce, and other considerations:—

"That the law of marriage, on account of its indissolubility, may not appear too rigorous, its beneficial consequences are to be presented to the consideration of the faithful. In the first place, they should know that the choice of a companion for life should be influenced by virtue and congeniality of disposition, rather than by wealth or beauty, a consideration which confessedly is of the highest practical importance to the interests of society. Besides, if marriage were dissoluble by divorce, married persons could scarcely ever want causes of dissension, which the inveterate enemy of peace and virtue would never fail to supply; whereas, when the faithful reflect that, although separated as to bed and board, they are still bound by the tie of marriage, and that all hope of a second marriage is cut off, they are more slow to anger and more averse to dissension; and if sometimes separated, feeling the many inconveniences that attend their separation, their reconciliation is easily accomplished through the intervention of friends."*

13. The present Pope, in a celebrated document, published on the 8th December 1864, confirms the teaching of the Roman Catechism regarding divorce, and condemns the following proposition:—"By the law of nature the marriage tie is not indissoluble, and in many cases divorce, properly so called, may be decreed by the civil authority."†

14. And here we may observe, that as the bond of marriage is indissoluble, the husband and wife, to whom a divorce, quoad thorum et mensam, has been granted, are still bound the one to the other. Hence, they may be reconciled, and return to live together without any new marriage:—

"Here, the salutary admonition of St. Augustine is not to be omitted by the pastor: to convince the faithful that they should not deem it a hardship to be reconciled to their penitent wives, whom they may have put away for adultery. 'Why,' says he, 'should 'not the Christian husband receive his wife, whom 'the Church receives? Why should not the wife 'pardon her adulterous but penitent husband, whom 'Christ has pardoned? When the Scriptures call 'him who keeps an adulteress "a fool," it means an 'adulteress who after her delinquency refuses to 'repent, and perseveres in the career of turpitude 'which he had commenced.' In perfection and dignity, it is clear, therefore, from what has been said, that marriage amongst the Jews and Gentiles is far inferior to Christian marriage."‡

15. In the definition or explanation of the constitution of marriage which we have given, No. 2, it is stated that matrimony can be contracted only *inter legitimas personas*—that is, by those who are capable of entering into such a contract. To explain this matter, it is necessary to observe that the Catholic Church, being vested with the power of binding and loosing, and with the administration of the Sacraments, has the inherent right, which she has always exercised, of establishing certain impediments, which prevent those who are subject to them from contracting marriage, either lawfully or validly, as the case may be. Some of those impediments are only impedient, that is, they render the marriage unlawful, but not invalid; others are diriment, that is, they prevent the effect of the consent of the parties, and render a marriage attempted with such an impediment invalid.

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Some of the diriment impediments, such as those which exist between brother and sister, are founded on the law of nature; others have been established for reasons of morality, to prevent sin between near relations, by leaving them no prospect of contracting marriage, or in punishment of sin, as when the adulterer, in certain cases, is prohibited to marry the adulteress; others, again, have been introduced for physical reasons, for it has been found, by experience, that the children of first cousins, and other near relations, are very often subject to scrofula and other dangerous diseases, and are frequently weak-minded or deaf and dumb.

16. The diriment impediments in the Catholic Church are more numerous than those admitted by Protestants, but we are not called on to mention them in detail, as they are given in every book of theology. It will be useful, however, to observe that it is defined by the Council of Trent, and held as a doctrine of faith, that the Church has the power of establishing impediments:—"Si quis dixerit, eos tantum consanguinitatis et affinitatis gradus, qui Levitico exprimuntur, posse impedire matrimonium contrahendum, et dirimere contractum, nec posse in nonnullis eorum dispensare, aut constituere ut plures impediant et dirimant: anathema sit." (Conc. Trid. sess. xxiv. *De Sacr. Matr.* can. iii.)

17. The present Pope has proclaimed the same doctrine in the Syllabus of the 8th December 1864, in which he condemns the following proposition:—

"Ecclesia non habet potestatem impedimenta matrimonium dirimentia inducendi, sed ea potestas civili auctoritati competit, a qua impedimenta existentia tollenda sunt." (Prop. lxviii.)

In subsequent propositions the Pope condemns the opinions of those who contend that such power is not inherent in the Church, and of those who asserted that the canons of the Council of Trent on this matter were not dogmatical:—

"Ecclesia sequioribus sæculis dirimentia impedimenta inducere cœpit, non jure proprio sed illo jure usa quod a civili potestate mutuata erat." (Prop. lxix.)

"Tridentini canones qui anathematis censuram illis inferunt qui facultatem impedimenta dirimentia inducendi Ecclesiæ negare audeant, vel non sunt dogmatici vel de hac mutuata potestate intelligendi sunt." (Prop. lxx.)

18. And here we may add, that as the Church has established all the impediments, which are of a mere ecclesiastical nature, so she has always exercised, and still exercises, the right of dispensing in them, when just reasons or necessity require that they should be relaxed.

19. We may now resume, in a few words, all that has been said regarding the ecclesiastical constitution of marriage:—

(*a.*) Marriage is a natural contract instituted by God, and hence it is quite different from mere civil and social contracts, which are subject to civil legislation, and may be changed or set aside altogether by the contracting parties.

(*b.*) This natural contract has been raised to the dignity of a sacrament by our divine Redeemer.

(*c.*) The matrimonial union can exist only between one man and one woman, so that no Christian can have several wives at the same time.

(*d.*) Matrimony, of its own nature, is indissoluble, and once consummated cannot be dissolved by any power on earth. Quod Deus conjunxit, homo non separet.

(*e.*) Hence, the modern theory, which allows those who have obtained a divorce in the civil courts to enter into a new matrimonial contract during the lifetime of the divorced party is repugnant to Catholic doctrine.

(*f.*) As marriage is a sacrament, the Church alone, which has received the power of loosing and binding from the divine Redeemer, can establish diriment impediments, and dispense in them.

(*g.*) Any man and woman placed under the jurisdiction of the Catholic Church, and subject to a diriment impediment, cannot contract marriage validly, unless

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manere innuptam, aut viro suo reconciliari. Eam vero optionem Apostolus mulieri, quæ justa de causa virum reliquisset, detulit, ut aut innupta maneat, aut viro suo reconcilietur. Neque enim sancta ecclesia viro et uxori permittit, ut sine gravioribus causis alter ab altero discedat."—*Ib.* par. 20.

* "Ac ne forte alicui videatur durior matrimonii lex, quod nulla umquam ratione dissolvi possit, docendum est, quæ sint cum ea utilitates conjunctæ. Primum enim, homines in conjungendis matrimoniis virtutem potius, et morum similitudinem, quam divitias et pulchritudinem spectandam esse intelligant; qua quidem re communi societati maxime consuli nemo dubitare potest. Præterea, si divortio matrimonium dissolveretur, vix umquam dissidendi causæ hominibus quæ iis ab antiquo pacis et pudicitiæ hoste quotidie objicerentur deessent. Nunc vero, cum fideles secum cogitant, quamvis etiam conjugii convictu et consuetudine careant, se tamen matrimonii vinculo constrictos teneri, omnemque alterius uxoris ducendæ spem sibi præcisam esse; ea re fit, ut ad iracundiam et dissidia tardiores esse consueverint. Quod si interdum etiam divortium faciant, et diutius conjugis desiderium ferre non possint; facile per amicos reconciliati ad ejus convictum redeunt."—*Ib.* par. 21.

† "Jure naturæ matrimonii vinculum non est indissolubile, et in variis casibus divortium proprie dictum auctoritate civili sanciri potest."—Syllabus, etc., prop. lxvii.

‡ "Sed hoc loco prætermittenda non erit pastoribus Sancti Augustini salutaris admonitio. Is enim, ut ostenderet fidelibus, haud gravata faciendum esse, ut cum uxoribus, quas adulterii causa dimisissent, si eas delicti pœniteret, in gratiam reducerentur. *Cur*, inquit, *vir fidelis non recipiet uxorem, quam recipit ecclesia? aut cur uxor viro adultero, sed pœnitenti, non ignoscat, cui etiam ignovit Christus?* Nam quod Scriptura stultum vocat, *qui tenet adulteram*, de ea sentit, quæ cum deliquerit, pœnitere et a cœpta turpitudine desistere recusat. Ex iis itaque perspicuum est, fidelium conjugia perfectione et nobilitate, tum Gentilium, tum Judæorum matrimoniis longe præstare."—*Ib.* par. 22.

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they shall have previously obtained a dispensation from the proper ecclesiastical authorities.

(*h.*) The Council of Trent has defined that matrimonial causes, as they are connected with a sacrament, belong to ecclesiastical judges: "Si quis dixerit, causas matrimoniales non spectare ad judices ecclesiasticos: anathema sit." (Sess. xxiv. *De Matrimonio*, can. 12.)

On Civil Marriages.

20. Treating of what are called *civil marriages*, it is necessary to observe that, according to Catholic teaching, marriage contracted between persons who are not baptized cannot be considered a mere social contract, but should be regarded as a contract which derives its force from the law of nature, and not from the civil law. As to marriage between those who are baptized, it is either a sacrament, or not a marriage at all.

21. This is clearly explained by the reigning Pontiff, Pius IX., in his letter to the King of Sardinia, 19th September 1852:—

"It is a dogma of faith that matrimony was elevated to the dignity of a sacrament by our Lord Jesus Christ, and it is a doctrine of the Catholic Church that the sacrament is not an accidental quality superadded to the contract, but belongs to the essence of the marriage itself, so that the conjugal union between Christians is not lawful except in matrimony—a sacrament without which there is nothing more than a mere concubinage."*

21. The same doctrine is also laid down in the *Syllabus* and *Encyclical* of the 8th of December last year, already mentioned. The condemned propositions, which have special reference to our present subject, are as follows:—

"Vi contractus mere civilis potest inter Christianos constare veri nominis matrimonium, falsumque est aut contractum matrimonii inter Christianos semper esse sacramentum, aut nullum esse contractum si sacramentum excludatur." (Prop. lxxiii.)

"Matrimonii sacramentum non est nisi quid contractui accessorium ab eoque separabile." (Prop. lxvi.)

Whilst thus, however, the Catholic Church admits of no mere civil marriages between Christians, it does not deny to Government the power of regulating, within its own sphere, and according to the dictates of justice, the civil effects of matrimony, making laws regarding dowries, the inheritance and transmission of property, and other similar matters which seem necessary for the temporal welfare of the state.

If the Catholic doctrine regarding the constitution of marriage be kept in view, and a proper estimate formed of civil marriages between Christians, it will be easy to define the limits of the powers of the Church and the State, and to prevent any collision between them. This is well explained by the present Pope, in his letter of the 9th September 1852, to the King of Sardinia, already quoted:—

"There is no other means of reconciling the spiritual "and temporal powers, except that Cæsar, retaining "what is his own, should leave to the Church what be- "longs to her. Let the civil authorities arrange the civil "effects which are derived from marriage, leaving to the "Church to determine when it is valid between Chris- "tians. Let the civil law start from the validity or "invalidity of the marriage, as it shall be determined "by the Church; and proceeding from this fact, which "it is out of its sphere to establish, let it dispose of the "civil effects." †

The Proofs of Marriage.

22. The proofs which are necessary to establish the existence of a marriage do not vary from the proofs which are required for any other fact, and are derived from oral or written evidence. Where the existence of a marriage contracted at a remote period is to be established, documentary evidence may be required, and that evidence is principally to be obtained from marriage registers. The value of every proof will be determined by the circumstance of each case, and the practice of the courts.

The Registration of Marriages.

23. In order to remove, as far as possible, all abuses in a matter so sacred, the Catholic Church has always been most anxious to provide for the accurate registration of marriages. As early as the time of Justinian, as appears from the *Novella*, 74, chap. 4, mention is found of matrimonial registers, which were carefully preserved by the Church. The Council of Trent, cap. 1, *de Matrimonio*, expressly enacts:—

"Habeat parochus librum in quo conjugum et testium nomina, diemque et locum contracti matrimonii describat, quem diligenter apud se custodiat."

The Roman ritual lays down also the following rule:—

"Peractis omnibus, parochus manu sua describat in libro matrimoniorum, nomina conjugum et testium, et alia juxta formulam prescriptam, idque licet alius sacerdos vel a se vel ab alio delegatus matrimonium celebraverit."

In Catholic countries this rule is accurately carried out, and the registers are, or were until lately, received in the public tribunals as an authentic proof of each marriage.

24. In Ireland, in past times, when Catholic teaching was proscribed by the State, the old marriage registers were destroyed, together with other public documents, sometimes by those in power, sometimes by the priest in whose possession they were, lest they should be made a ground of accusation against himself or other ecclesiastics, or against those whose names were inscribed in them. Within the last few years attempts have been successfully made to re-establish these parochial registers; and the Synod of Thurles, held in 1850, strictly enjoins that each parish priest should be provided with such registers, and similar enactments have been made in each diocese.

25. As to the system of registration introduced by Government, in the beginning of 1864, it has not had as yet a full trial, but it is likely to work well, and to secure the registration of all marriages celebrated in the Catholic churches. When any marriage is to be celebrated in those churches, the parish priest, or his deputy, fills up a form supplied by the registrar of the district. It is then signed by the bridegroom and the bride, and the officiating clergyman, and returned to the registrar. There will be, perhaps, a little difficulty or awkwardness in doing this for some time; but undoubtedly this system will secure, by degrees, an accurate registration of all Catholic marriages. However, it will be attended with a vast amount of expense considering the number of registrars who must be employed to carry on the work. Perhaps all that expense might be avoided, and as correct a registration obtained, if the registers kept by Catholic parish priests were recognized as legal, as was the case in Catholic countries, and some place provided where they might be preserved with safety. It does not appear desirable that the Government should be obliged to encrease the taxes of the country by centralizing everything, and undertaking to perform what might be done by local exertions.

Operation of the Present Law.

26. During part of the period of the existence of the penal code, Catholics in Ireland were obliged to pay a heavy fee to the Protestant parson of their parish, though he had not assisted at their marriage; otherwise, however, their marriages were not much interfered with, and were recognized as valid when celebrated by Catholic priests.

Within late years legislation has taken another course, and several laws have been introduced, which are at variance with Catholic doctrine.

(*a.*) In the first place, registrars have been established with power not only to register but to celebrate marriages. If two Catholics present themselves before a registrar, and contract marriage in his presence, such marriage is considered legally valid, though all Catholics can regard it in no other light than that of a mere concubinage, as it is null and void in force of the decree of the Council of Trent on clandestine mar-

* "E' domma di fede essere stato il matrimonio da Gesù Cristo Nostro Signore elevato alla dignatà di Sacramento, ed è dottrina della Chiesa Cattolica che il sacramento non è una qualità accidentale aggiunta al contratto, ma è di essenza al matrimonio stesso, cosicchè la unione conjugale tra i Cristiani non è legittima se non nel matrimonio, sacramento fuori del quale non vi è che un pretto concubinato." (Lettera di S. S. Pio IX. a S. M. Vittorio Emmanuelle, da Castel-Gandolfo, 19 Sett., 1852.)

† "Non vi è altro mezzo di conciliazione, che ritenendo Cesare quello che è suo, lasci alla chiesa ciò che ad essa appartiene. Il potere civile disponga pure degli effetti civili che derivano dalle nozze, ma lasci alla chiesa il regolarne la validità fra i Cristiani. La legge civile rendendo le mosse dalla validità o invalidità del matrimonio, come sarà dalla chiesa determinato; e partendo da questo fatto, che è fuori della sua sfera il costituirlo, disponga allora degli effetti civili."—(Letter to King Victor Emmanuel, 9th September, 1852.)

riages, a decree which has been published in all Ireland.

(*b.*) Besides, if two Catholics contract marriage in Ireland (where the law of clandestinity is received), in a Protestant Church, or with the ministrations of a Protestant clergyman, the marriage is invalid in the eyes of the Catholic Church, but is held to be valid and binding by the State.

(*c.*) If two Catholics, who are subject to diriment impediments of the Catholic Church, when such impediments are not admitted by Protestants, succeed in celebrating a marriage before a registrar or a Protestant minister, though their marriage is invalid in the eyes of the Catholic Church, and can be looked on only as a mere concubinage, yet it will be maintained as valid by the State.

(*d.*) If a Catholic converted from Protestantism, within a year from his conversion contracts marriage with one who was always a Catholic, in presence of a Catholic priest, such marriage is, according to law, invalid, and the priest assisting at it is liable to a penalty.

(*e.*) A Catholic priest, assisting at a marriage between a Catholic and a Protestant, is liable to a severe penalty; and though the marriage, if otherwise properly celebrated, is valid in the eyes of the Catholic Church, it is held to be invalid by the State.

(*f.*) A court of divorce has lately been established in these kingdoms, and very many persons have been divorced from their wives or husbands, and allowed to marry again. As far as Catholics are concerned, they must condemn this practice as opposed to the doctrine of their Church, and look on a marriage contracted by persons who have obtained a divorce from their lawful wife or husband, as a mere concubinage.

27. The various cases to which we have referred, and others which we pass over in silence, are sufficient to prove that Catholics cannot be satisfied with the operation of the present marriage laws. Some of these laws appear to hold out an encouragement to Catholics to transgress the laws of their Church, and to contract marriages whilst they are subject to impediments which render such marriages null and void in the sight of God. Many of these laws are also in opposition to the decrees of the Holy See, and to the enactments of general councils. Hence, they cannot be reconciled with that liberty of conscience to which Catholics are entitled, and they seriously interfere with the freedom of religion. For Catholics sincerely adhere to the teaching of the Vicars of Christ, and of all general councils, and receive their decisions as coming from God, not from man, in the same way as the words of St. Paul were received by the Thessalonians: "Cum accepissetis a nobis verbum auditus Dei, accepistis illud, non ut verbum hominum, sed (sicuti est vere) verbum Dei."

28. It is also to be observed that the tendency of the enactments above-mentioned, and, indeed, of all modern legislation, is to withdraw marriage from religious control, to deprive it of its sacred character, and to put it on a level with ordinary contracts. Legislation in this sense is well calculated to destroy the happiness of families, to spread immorality, and to render the education of children extremely difficult and uncertain, especially where the practice of divorce is established.

29. The Emperor Joseph II. was one of the first promoters of the secularization of marriage and other similar innovations. By doing so he disturbed the peace of his dominions, and lost some of them altogether.

In Belgium the secularization of marriage is complete, and it is maintained by most vexatious enactments. Things, indeed, have gone so far, and the system of secularization has worked so fatally, that an association called the Société Solidaire has been formed, the members of which bind themselves to do away with the religious celebration of marriage. In France, also, and Italy, marriage has been secularized.

30. Regarding both France and Belgium, it may be confidently asserted that public morality has been greatly deteriorated by recent innovations in regard to marriage. In a discourse delivered in the parliament of Turin, on the 20th March last, Signore Chigi, one of the deputies, examined the merits of modern legislation on this subject. Having quoted the statistics of France, Belgium, and of some other countries where marriage has been secularized, he deduced from his facts and figures the four following conclusions:—1st, that in all those countries the number of legitimate marriages is smaller than that of illicit unions; 2ndly, that in the same countries a large per-centage of the children are bastards, one-eighth is said to be exposed after birth, and many are left to die on a handful of straw in a hospital; 3rdly, that the number of those condemned for ordinary crimes is very great, and consists principally of bastards; 4thly, that the population decreases, and the inhabitants lose strength and vigour.—(See Civiltà Cat. April, 1865.)

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If we contrast France and Belgium, and other countries where marriage has been stripped of its sacred character, and divorce introduced, with Ireland, where a religious respect for marriage still prevails, and where we have no divorce court for the great mass of the inhabitants, the conclusion will be forced on us that modern innovations have not been useful to society, and that it is not desirable to extend them. In fact, whilst other countries are suffering the evils to which we have referred, Ireland can boast that within her boundaries illicit unions are not frequent; that the number of illegitimate children is very small, except among the workhouse population; that child-murder is almost unknown; that the abandoning of children by their parents, notwithstanding their poverty, is not frequent, and that the country in general, as appears from the charges of the judges, even in a time of great depression and misery, is very free from crime. Is it desirable to imperil this state of things by stripping marriage of its sacred character?

In confirmation of what we have just said, we shall quote a passage from the Right Hon. Edmund Burke, in which the great evils arising from the secularization system, and from the permission of divorce, and also the necessity of sanctifying marriage by religious ceremonies, are all put in a very strong light:—

"All their French new institutions (and with them everything is new) strike at the root of our social nature. Other legislators, knowing that marriage is the origin of all relations, and consequently the first element of all duties, have endeavoured, by every art, to make it sacred. The Christian religion, by confining it to the pairs, and by rendering that relation indissoluble, has by these two things done more towards the peace, happiness, settlement, and civilization of the world, than by any other part in this whole scheme of Divine Wisdom. The direct contrary course has been taken in the synagogue of antichrist—I mean in that forge and manufactory of all evil, the sect which predominated in the Constituent Assembly of 1789. Those monsters employed the same, or greater industry, to desecrate and degrade that state, which other legislators have used to render it holy and honourable. By a strange, uncalled-for declaration, they pronounced, that marriage was no better than a common civil contract.

"The practice of divorce, though in some countries permitted, has been discouraged in all. In the East, polygamy and divorce are in discredit; and the manners correct the laws. In Rome, whilst Rome was in its integrity, the few causes allowed for divorce amounted in effect to a prohibition. They were only three. The arbitrary was totally excluded; and accordingly some hundreds of years passed without a single example of that kind. When manners were corrupted, the laws were relaxed; as the latter always follow the former, when they are not able to regulate them, or to vanquish them. Of this circumstance the legislatures of vice and crime were pleased to take notice, as an inducement to adopt their regulation; holding out a hope that the permission would rarely be made use of. They knew the contrary to be true; and they had taken good care that the laws should be well seconded by the manners. The law of divorce, like all their laws, had not for its object the relief of domestic uneasiness, but the total corruption of all morals, the total disconnexion of social life.

"It is a matter of curiosity to observe the operation of this encouragement to disorder. I have before me the Paris paper correspondent to the usual register of birth, marriages, and deaths. Divorce, happily, is no regular head of registry amongst civilized nations. With the jacobin it is remarkable that divorce is not only a regular head, but it has the post of honour. It occupies the first place in the list. In the three first months of the year 1793, the number of divorces in that city amounted to 562. The marriages were 1785; so that the proportion of divorces to marriages was not much less than one to three—a thing unexampled, I believe, among mankind. I caused an enquiry to be made at Doctors' Commons concerning the number of divorces, and found that all the divorces (which, except by special

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Act of Parliament, are separations, and not proper divorces) did not amount in all those courts, and in an hundred years, to much more than one-fifth of those that passed, in the single city of Paris, in three months. I followed up the enquiry relative to that city through several of the subsequent months until I was tired, and found the proportions still the same. Since then I have heard that they have declared for a revisal of these laws; but I know of nothing done.

"It appears as if the contract that renovates the world was under no law at all. From this we take our estimate of the havoc that has been made through all the relations of life. With the jacobins of France, vague intercourse is without reproach; marriage is reduced to the vilest concubinage; children are encouraged to cut the throats of their parents; mothers are taught that tenderness is no part of their character, and, to demonstrate their attachment to their party, that they ought to make no scruple to rake with their bloody hands in the bowels of those who come from their own." (Burke, Letters on a Regicide Peace, tome 1st, p. 279; Bohn's edition, in 2 vols. 4to. London, 1841.)

To conclude, it may be observed that to satisfy the exigencies of Catholics, they ought to be exempted from the operation of all legislation opposed to their doctrines. If others wish for courts of divorce and civil marriages, and if it be considered proper to yield to their wishes, that is no reason why Catholic doctrines and practices should be interfered with, and laws enacted calculated to destroy the sanctity of marriage, one of the sacraments of their Church. Where in a country there are several religious denominations, the same laws affecting religion cannot be applied to all without doing an injustice to some.

The undersigned have the honour to be,
With great respect,
Your Lordship's obedient Servants,

✠ Paul Cullen.
✠ E. Walsh, D.D.
✠ James Walshe.
✠ Thomas Furlong.

To the Right Hon. Lord Chelmsford, &c. &c.

Archbishop Dixon, and Bishops Kelly, Dorrian, and Kilduff.

Letters intimating concurrence with the above communication of the Roman Catholic prelates (No. 43) have been received from the Most Rev. Joseph Dixon, D.D., Roman Catholic Archbishop, and the Right Revs. Francis Kelly, D.D., Patrick Dorrian, D.D., and John Kilduff, D.D., Roman Catholic Bishops in Ireland.

The Bishop of Derry and Raphoe.

No. 26.—The Lord Bishop of Derry and Raphoe.

Palace, Derry,
15th September 1865.

My Lord,

I have the honour to acknowledge your Lordship's communication as Chairman of the Marriage Law Commission, requesting from me any information or suggestions which I might be enabled to offer on the important subject proposed for their investigation.

In compliance with this request I beg to submit such considerations as have occurred to me in connection therewith. And—

1st. With regard to the nature and constitution of the marriage bond. There can, I think, be no doubt that it is essentially a *civil* contract; to the validity of which a religious ceremony is not absolutely required. The Church of England and Ireland, rightly as I conceive, rejects it from the number of Christian sacraments, inasmuch as it has no visible sign or ceremony ordained of God, and designates it merely as a state of life allowed in the Scriptures. Being, however, a contract of the highest possible importance, on the faithful observance of which the welfare of the community so largely depends, and the breach of which entails so many miseries, it is clearly the interest of the Commonwealth that the idea of it should be contemplated with the utmost solemnity, and that the strongest and most influential motives should be called into action in connection with it, on which account it is in almost all ages and countries accompanied by the sanction of a religious ceremony, and notedly so among all Christian communities from the earliest period. It seems, therefore, not only unobjectionable, but highly desirable that the ministers of religion should, as far as possible, be the persons empowered by the State for this purpose.

While in this view it will scarcely be doubted that the power referred to should be conferred on the ministers of all religious denominations as respects parties belonging to their own communions, it may perhaps be open to question, whether in the case of mixed marriages it should not be restricted to the ministers of the church established in the country. As, however, it seems desirable that the liberty of parties about to marry should not be needlessly interfered with, I should be inclined to extend this privilege to all ministers of whatever denomination who may be willing to comply with the requirements of the State as to times, places, &c. of performance, and likewise as to registration. These requirements should be, in my opinion, as far as possible *identical* as regards the various religious bodies, and with this view the canonical hours within which the performance of the rite is at present restricted in the Established Church should be extended to the same limits as are allowed to other denominations.

There remains the case of those who do not profess communion with any religious body, and in whose minds a religious service would give no additional force or efficacy to the civil contract. For them the means of contracting marriage before a purely civil officer should probably be retained.

2nd. With respect to the next point, viz., that of Registry. It appars to me to be sufficiently provided for by the arrangement at present in existence as regards the Established Church, and I believe likewise among the other Protestant denominations in Ireland, namely by registering in duplicate at the time of the ceremony, and transmitting certified copies periodically to the central office in Dublin. I consider that some such system should be made compulsory on the ministers of all denominations, as a condition of marriages performed by them as valid in law. I would also suggest that as the duty of registering and forwarding the certified copies entails in many cases much trouble, and as heavy penalties are properly attached to any neglect or default, it would be reasonable that a moderate fee should be payable to the officiating minister by the parties married *for the registration*, and distinct from any customary fee or offering for the marriage itself, these latter being frequently optional as to amount, and in many cases being altogether in abeyance.

3rd. As regards *proof*. I am unable to suggest any improvement on the present system, as existing among the several Protestant denominations in Ireland, viz., the production of either of the duplicate registers, or a copy of the entry from the central office duly attested.

4th. As to the working of the present law. I have reason to think as regards the several Protestant communities in Ireland it is on the whole satisfactory. It is sometimes complained that the marriages by the Registrars have not always the publicity that might be desired. The notice of marriage is ordered to be read at a meeting of the Board of Guardians, but when, as often happens, no member is present from the immediate locality in which the parties reside, it usually passes without observation. Perhaps it might be practicable to ensure greater publicity by a copy of the notice being sent by the Registrar or the Clerk of the Union to the guardian or guardians representing or connected with the Electoral division in which the parties respectively reside. Complaints are likewise often heard with regard to marriages by Roman Catholic clergymen, which appear to be performed at any time or place, and frequently (it is said) in a clandestine manner; but on this subject I am unable to speak, except on hearsay.

There is but one additional matter on which I would offer a suggestion, viz., the advisability of facilitating in certain cases, and under proper restrictions, the performance of the marriage ceremony without the ordinary restrictions as to notice, time, place, &c., as for instance, when parties have been living in concubinage, and have a natural reluctance to a public marriage; or when a man on his sick or dying bed may be desirous of making reparation to the woman with whom he has illicitly lived by marrying her. It might be worthy of consideration whether such a laudable object might not be attained by a system of *special licences* at a moderate cost, on a sufficient representation to the Bishop or the Registrar-General of the nature and urgency of the case.

In conclusion I would observe that in my opinion the great point to be kept in view is that the laws and regulations on this subject should be such as that neither the unwary or unwilling may be entrapped into the marriage, nor the designing be enabled by any technicalities to escape from it when fairly undertaken.

The chief means for attaining this end is *publicity*, and this, I think, the State ought to require from every person or community claiming the sanction of law for the ceremony performed by them.

I have, &c.

No. 27.—The Rev. Edward Whiteley, M.A., English Chaplain at Oporto, to the Commissioners appointed to inquire into the Laws respecting Marriage.

Oporto, 30th March 1865.

My Lords and Gentlemen,

As it will not be in my power to give evidence before the Commissioners appointed to inquire, amongst other things, "into the state of such laws of the United "Kingdom as relate to the marriages of British sub-"jects in foreign countries," I take the liberty of submitting the accompanying statement relating to marriages in Portugal to the consideration of the Commissioners themselves.

I have the honour to be, &c.

That marriages of Portuguese subjects, in Portugal, must be celebrated by a Roman priest.

That the laws of Portugal do not recognize as valid any merely civil contract of marriage made at a British consulate between a Portuguese and a British subject, according to the Act of Victoria.*

That all such contracts made at the consulate can afterwards be repudiated by the Portuguese subject who made it, and who can afterwards be married by the laws of the land, be the time never so short after having made the contract referred to at the consulate.

That if such contract, however, be never repudiated, the children of the parents who made it are illegitimate, and, as such, cannot claim the property of their parents if they be Fidalgos.

That the British subject making *such* a contract of marriage at the consulate only is debarred, from claiming the one half of his or her property, as the case may be, to which each party would be respectively entitled if the marriage had been duly celebrated according to the laws of Portugal.

That English parents cannot be unmoved if their daughters are to be in a position in which they would or could ever be left to the tender mercies of men who had the power to abandon them and their children, and then to marry *in* Portugal, *ad libitum*, according to the laws of the land.

It is true that illegitimate children can claim two-thirds of their parents personal property, if the parents have acknowledged them to be their children before competent witnesses, as was lately decided in Portugal, and by the Privy Council, in London, in the case of Crispin *v.*†

That the Secretary of State could limit the special and specific authority to consuls to the celebration of such marriages as would be held to be legal in the countries where celebrated; and thus English parents would not be compelled to send their daughters to England to avoid the risk of such consequences as, sooner or later, will arise if mixed marriages are celebrated without the intervention of the priest at the British consulates in Portugal.

Edward Whiteley,
Forty years' resident in Oporto as English Chaplain.

No. 28.—The Lord Bishop of Llandaff.

My Lord, 22nd November 1865.

I have the honour to acknowledge the receipt of your Lordship's circular of May 25th, which came to me on June 15th.

In reply to it I beg to forward to the Marriage Commissioners—

No. 1. A letter from the Venerable W. Crawley, Archdeacon of Monmouth.

No. 2. A letter from the Venerable H. L. Blosse, Archdeacon of Llandaff.

No. 3. A resolution passed at a meeting of my archdeacons and rural deans on Thursday last, in reference to a communication that had been received from the Church Institution on the subject of marriage; and

No. 4. A letter from the Rev. H. P. Edwards, one of my rural deans.

At the meeting just referred to I read your Lordship's letter, and after it had been discussed I requested the rural deans to favour me with any information they could give on the points mentioned therein, in a written form, that I might send them to the Commission. This is the only letter I have as yet received, but I expect that some others will follow it. The Bishop of Llandaff.

I have the honour to be, &c.

(No. 1.)

My dear Lord, Llandaff, 29th June 1865.

I have nothing to say on the subject of Lord Chelmsford's letter to you of the 15th June, except in reference to the very obvious evils occasioned by the mode of publication of the intended marriage by hanging up the names of the parties in a registrar's office, which is in fact no publication at all; and the unhappy tendency of the power given to marry before the registrar to diminish the sense of the obligation of the marriage vow.

Believe me, my dear Lord, &c.
William Crawley.

(No. 2.)

My dear Lord, Bridgend, 4th July 1865.

You begged me to speak to you at Petertide on the subject of the letter you sent me on June 15, but as I had not then the pleasure of seeing you I think you may expect me to write about it. The question opens out a very large field, but as it is only on the practical working of the present law that you ask for information, I readily send a reply.

I have no hesitation in condeming the mode in which banns of marriage are published (?) in the registrar's office. It affords ample opportunity for clandestine and illegal marriages, and by no means gains the end proposed, for the office is only open for a few hours in the day, and is by no means a public place. Nor as far as I can learn is any kind of inquiry made as to the truth of the statement made by the person putting in the banns.

The marriage at the register office is devoid of any kind of solemnity, and is not regarded by people in general with anything like the obligations and sanction that accompanies marriage attended with a religious service.

Women especially prefer being married in church or chapel, believing that marriage vows then made will have a better chance of being kept than the obligations of a mere civil contract. I am thankful to say that the registrar's office is very little resorted to in this district.

In the present spirit of the times I cannot hope that religious services will be always insisted on, but I would suggest that civil marriages should take place in the presence of some official superior in standing to the registrar, and that they should be conducted in a more decent manner than they frequently are.

I am, my dear Lord, &c.
Henry Lynch Blosse.

(No. 3.)

A letter was read from the Secretary of the Church Institution calling attention to the decrease in the number of marriages in church, and stating that the rural dean of Arllechwedd had suggested, with a view to remedy the evil, that the clergy should be empowered to issue cheap forms of licences, the expense of licences and the publicity of banns being the cause of the decrease.

It was resolved that,—

This meeting is not favourable to the suggestion of the rural dean of Arllechwedd, but is of opinion that the diminution in the number of church marriages is in a measure owing to the dislike entertained to the publicity of banns; that this dislike is a growing feeling; that the growth of it is owing to the knowledge of the fact that marriages before the registrar involve no such publicity as is required for banns; that the remedy of the evil complained of is not to be found in the adoption by the church of any system of secrecy, but by the practice becoming more general in the higher classes of marrying by banns, instead of by licence, and also by the Legislature taking effective measures to make the application for a marriage certificate in the registrar's office as public as is the case with banns.

And, further, that the evil complained of is partly owing to the fact that persons who have obtained a registrar's certificate may marry in any chapel within the whole area of the union, while those who are married by banns must marry in the church of one of the parishes in which the parties reside.

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* 12 & 13 Vict. c. 68.

† *See* Crispin *v.* Doglioni, 2 Swabey and Tristram, p. 17.

The Bishop of Llandaff.

(No. 4.)—The Rev. H. Powell Edwards.

The Vicarage, Caerleon,
My dear Lord, 18th November 1865.

In compliance with your Lordship's permission to send you in writing the opinions on the present law of marriage expressed by me at the meeting of rural deans held at Bishop's Court last Thursday, I beg to submit to your notice the following considerations:—Mr. Wilks in his treatise on marriage by banns plainly shows that the present system is open to sad abuse, and the measure proposed by him would remove this tendency; but it will generally be found that very few clandestine marriages take place in consecrated buildings compared with the number so married elsewhere. The registrar is empowered to ask very appropriate and searching questions of those who apply to him for a licence or certificate, and a person giving false answers renders himself liable to a heavy penalty. But do registrars always warn persons so applying to them of these consequences before receiving their replies? Again, allowing that some designing man goes to the registrar of his district with the intention of being married to a woman whose friends disapprove of the union on just and sufficient grounds. How are such friends to hear of such intended marriage? The Union may embrace twenty or more parishes, many of them having a large population. The guardians of each parish is supposed to attend the weekly meetings of the board. Yet in practice it is found that a large proportion are present only three or four times in the year, and when present seldom, if ever, trouble themselves to inquire about proposed marriages. It is therefore clearly impossible for a registrar so placed, and guardians so acting, to lay any check upon secret marriages at the registrar's office. It would therefore seem that while the law of banns is faulty in *theory*, that of marriage by a registrar is far more faulty in *practice*. To remedy *both* evils it would appear to me that the power of investigation now confined to the registrar should be extended to the parochial clergy, and the publicity of banns made *common to both*, either by asking them in Non-conforming places of worship, where the church is disapproved, or by some other means calculated to effect the desired object, such as a printed gazette containing all proposed marriages in one or more unions, a copy of which should be sent to the several guardians and parochial incumbents. Should these plans be found inconvenient, and the existing rule with respect to registrars be continued, it would seem to me that incumbents of parishes ought to have power to marry without publication of banns in the same way as registrars, for the present system induces many ignorant people to decline the religious ceremony from no dislike or prejudices but simply *for the greater privacy* of the registrar's office. Two members of my congregation were thus married seven years ago, they and their friends supposing that marriage before a registrar was *perfect in every way*, "because Government sanctioned it." Since that time I have married three couples in this church by certificate from the registrar of this union. I would observe in concluding that the present law seemingly tends to lessen the sacredness of holy matrimony in the estimation of the humbler classes, and that such evil cannot be too strongly deprecated.

I have the honour to remain, &c.

The Deputy Registrar of the Diocese of Winchester.

No. 29.—Charles Wooldridge, Esq., Deputy Registrar of the Diocese of Winchester.

My Lord, Winchester, 22nd Nov. 1865.

I am sorry your Lordship's letter of the 18th June last has not been replied to before, and I must apologise for the delay, but the letter was accidentally mislaid and has only just been found.

With regard to the state of the Marriage law, &c. as at present constituted, I would venture to make one or two observations. I certainly think, so far as the registration and the means of preserving evidence of the marriage contract at present exist, there is little need of any alteration, the system as now carried out under the Act 6 & 7 Will. 4. c. 86., being in my opinion sufficient for the protection of the public. As to the different modes of obtaining the required authority to perform the marriage ceremony, I would say that I think the law with reference to marriage licences sufficiently complies with the requirements of the public and of private individuals, the protection of an oath as to the circumstances, age, place of marriage, &c. being thrown around the granting of licences; but in marriages by banns I have always felt that there is a deficiency in the law, inasmuch as a mere statement of the parties is given, and often the proper questions and inquiries that ought to be asked and made are not carefully attended to, and the duty of putting these questions, &c. is often left to a parish clerk.

As the law at present stands there is a return made into the registry of each diocese of baptisms and burials (under the provisions of the Act of 52 Geo. 3. c. 146. and other Acts) that have taken place in every parish in the diocese, these returns are hardly ever resorted to, and as the Act of 6 & 7 Will. 4. c. 86. for registering birth, marriages, and deaths secures a good return and registration, I do not see the utility of continuing these returns from the different parishes. The return for marriages was abolished when the Act of 6 & 7 Will. 4. was passed, but the baptisms and burials were continued under the old law.

I have the honour to be, &c.

No. 30.—The Right Rev. Lawrence Gillooly, D.D., Roman Catholic Bishop in Ireland.

My Lord, Sligo, 27th November 1865.

In compliance with your Lordship's request, I beg to submit the following observations on the subject of the proposed Marriage laws, for the consideration of the Commissioners in whose name your Lordship lately addressed me. Other prelates will, I am sure, present more fully to your Commission the doctrine and teaching of our Church on this most important subject; and as between their views and mine there can be no substantial difference, I hope to be excused, if, yielding to the pressure of other duties, I confine myself to the mere indication of those principles and facts which appear to me of chief importance.

Following the order suggested in your Lordship's letter, I will speak, 1st, of the institution of marriage; 2nd, of the indissolubility of the marriage contract; 3rd, of its proofs; 4th, of its registration; 5th, of the operation of our present Marriage laws.

1st. As regards the origin and institution of marriage, we hold that it is *divine; i.e.*, that marriage, or the conjugal union of man and woman, was established, not by man, but by God Himself. By Him it was blessed and made the life-spring of human society. This divine origin and sacred character was, by an unfailing tradition, religiously believed and acknowledged in all ages and amongst all nations down to the Christian era. By our Divine Lord the dignity and sacredness of marriage was most solemnly asserted and proclaimed; the marriage of Christians then became the type of the union of Christ with His Church, and a sacrament of the Christian law, signifying and conferring grace; and the Church of Christ, following the example and obeying the instructions of her Divine Founder, has in every age and country treated marriage as a divine institution, and most jealously guarded its sacred character as the chief source and the indispensable condition of morality and happiness in human society.

To wrest marriage from the guardianship of the Church was one of the first attempts of the infidels and revolutionists of modern times. Those perverse men hated all authority, trampled on every law, and obeyed only the instincts of their evil appetites. What wonder they should assail the holiness and stability of marriage, and recommend divorce and concubinage? And when God in His anger allowed those enemies of society to become its rulers and legislators, their authority was naturally employed to withdraw marriage from religious control, to strip it of its sacred character, and by this legal profanation to lead men to disregard and dishonour it. By these men was the so-called *civil marriage* devised; by them has it been established in several countries; and surely its very origin should brand it with infamy and bespeak its condemnation, even were experience wanting to exhibit its baneful, loathsome effects. These, however, are unhappily but too evident and general. Census tables, commissioners' reports, books of travels, documents public and private, of reliable authority, reveal to us the lamentable but instructive fact that in those countries in which marriage is secularised and desecrated, there has been a steady decrease and physical deterioration of the population; an increase of concubinage and of its accompanying crimes,—wife and child desertion and child murder; a loosening of family ties, with a corresponding disregard of family obligations; and a general declension of moral habits and principles.

Considering, therefore, on the one hand, the great social evils, spiritual and temporal, arising from the secularisation of marriage, and on the other hand the obligation resting on the Christian legislator of recognizing and maintaining the sacred character imparted by God both in the old and in the new dispensation to marriage, and which is so conducive and even indispensable to the welfare of society, I arrive at the following conclusions:—1st. That the marriage contract, it what regards it essence and validity, is not matter for

civil legislation; and that it is the duty of the Christian legislator to resist instead of obeying the evil passions which would deprive marriage of its sacred character. 2nd. That the purely civil marriage, such as may now be contracted before our registrars, should be abolished and prohibited. 3rd. That all marriages should be contracted under the control and auspices of religion and with the blessing of its ministers. And to apply those principles, the Marriage law should enact that no marriage should be recognized by the State except those contracted before the pastor of *both* or of *either* of the contracting parties; or, in default of such pastor, of any minister of religion whom the parties might select.

2nd. Marriage, from its primitive institution and by the ordinance of Christ, is *indissoluble*, and can exist only between one man and one woman, each of whom is free to contract with the other. By this law God has provided a necessary protection for the peace and morality of families against the corruption and inconstancy of the human heart. Husband and wife may for special reasons live apart from each other, and the ecclesiastical and civil powers may authorize them to do so, but such separation can never affect the *bond* of marriage, which death alone can sever. Whence it follows, 1st, that divorce between parties once validly married is not only essentially criminal, but utterly null and void; 2nd, that no human law can authorize such divorce or give validity to the marriage of the divorced parties with others; 3rd, that a law pretending to do so only encourages and legalizes concubinage, and unsettles the very foundations of society. Hence in the new marriage law the present Divorce Act, and the courts administering it, should be abolished; and the State should take cognizance only of those cases of separation *quoad thorum et mensam*, in which one of the parties would claim and require its protection.

3rd. The importance of the marriage contract demands that it should be made in presence of credible witnesses; of these there should be at least three, one of them the minister of religion, whose presence the law should declare necessary for the legal recognition of the contract.

4th. The proofs of marriage, provided in the Act lately passed for the registration of the marriages of Roman Catholics in Ireland, appear to me adequate for all civil purposes, and applicable, with slight changes, to all marriages. This system of registration is in possession, and besides it is as free from grave objections as perhaps any other that could be devised, and would harmonise with a marriage law such as I contemplate.

5th. The operation of our present marriage laws is, as may be easily inferred from preceding observations, very unsatisfactory and objectionable to Catholics. Those laws are in many respects directly opposed to Catholic doctrine; they are oppressive to the consciences of Catholics, and are necessarily regarded by them as violations as well of civil equality as of religious liberty. They are, and, until repealed, must continue to be a source of just and deep dissatisfaction; they are standing evidences of a hostile persecuting spirit, which it would be well in the interest of Church and State in both countries to remove promptly and for ever. Amongst those enactments the five following are more directly opposed to our doctrine, and to the practical religious obligations of Catholics.

(1.) The Act giving legal sanction and validity to the purely civil marriage contracted before a registrar, such marriage being, according to Catholic faith, not only grievously sinful, but absolutely null and void between two Catholics in this country. The law in this case is a cloak and encouragement to concubinage, and an incentive to the violation of the gravest religious duties.

(2.) The Act authorizing the ministers of the Protestant Church to assist at the marriage of two Catholics, which, in such case, is equally invalid and criminal as when contracted before a lay registrar.

(3.) The Act which disallows several of the *diriment impediments* of marriage, established in our Church, and authorizes the registrar or Protestant minister to marry Catholics subject to those impediments,—such marriage being held in our Church to be totally invalid.

(4.) The Act which forbids and declares invalid the marriage by a Catholic Priest of a Catholic with a Protestant, or with one converted within the preceding year from Protestantism, and enacts severe penalties against the priest who assists at such marriage. This Act sanctions the re-marriage of the parties with others, whilst in our Church such second marriage is bigamy, the first being valid in conscience and before God.

(5.) The Divorce Act, which pretends to dissolve the marriage contract and to constitute the couple previously married free to remarry with others. The court in which this law is administered being open to persons of all religious denominations, and offering to Catholics of loose morals a great temptation to sacrifice conscience to cupidity; such an institution being, moreover, of its own nature opposed to Christian faith and morality, and destructive of the best interests of society, we regard the divorce law as a grievance to Catholics, and we should protest against it even though no member of our communion should ever take advantage of it.

Bishop Gillooly.

These examples show that certain marriages of Catholics, valid in conscience, are declared and treated by the law as invalid, whilst others that are invalid are authorized and declared valid by law.

In treating the foregoing questions I have had in view a general uniform marriage law, whose provisions would apply not only to members of our Church, but equally to citizens of all religious denominations known to or recognized by the State. The framing of such a measure I presume to be in the mind of the Government, and to have been the object of the appointment of your Commission. I have therefore confined myself to a few essential principles and provisions, which every Christian State, recognizing liberty of conscience and religion, may, and, in my opinion, ought to establish as the groundwork of legislation in this matter, and which also appear to me perfectly consonant and reconcileable, if not with the prejudices, at least with the religious tenets of every Christian community. A marriage law based even on those general and universally admitted principles may not escape opposition, but will easily triumph over it. Any attempt to change even the *accidental forms* of the marriage *contract*, hallowed as they are by religious sanction and observance, would be sure to excite apprehension and opposition; but interference with any of those religious statutes and observances which are believed necessary for the *validity* of marriage would be regarded with reason as unjust and tyrannical, and, if imposed by legal coercion, would certainly be resisted or evaded by every subject of upright conscience, who believes in a spiritual authority distinct from and superior to the State. Collision between law and conscience is always disastrous to society, and in no matters should the legislator so studiously avoid it as in those which, like marriage, touch the feelings and interests of every family, and deeply affect the conscience of every honourable Christian man. For these reasons I would consider it of primary necessity, in framing this uniform law, to eschew all provisions which would in any way affect the validity of the marriage contract, *past* or *future*, or interfere with the freedom of conscience of the contracting parties. And for that object the religious rite should be left exclusively to the care of the ministers of religion; and the provisions of the law should apply exclusively:—1, to the religious celebration of the mariage; 2, to the witnessing of the contract; 3, to its registration; 4, to the civil effects of marriage, as regards the persons and property of married people. Such a law, by respecting the religious tenets and feelings of men of all religious denominations, would secure the ready acceptance and co-operation of all; whilst it would at the same time adequately provide not only for the stability and sacredness of marriage, but for all the civil or temporal interests of society affected by it.

A marriage law, like those which some continental states have inherited from the French Revolution, would never be accepted in this country. An attempt to impose such a law on our people would be productive of many great social evils; it would intensify incalculably the feelings excited by our present marriage law, and others that are deemed unjust and oppressive; it would weaken still more the respect and obedience which religion enjoins for just laws and for the secular power by which they are made; and gradually but inevitably disaffection would be promoted, and the civil power would lose the strength it derives from conscience. Such would, I am convinced, be some of the unhappy effects of an infidel marriage law in this country; and I think it right not only to call attention to this point, but candidly to declare, that in the event of such a law being proposed, I would myself give it the most public and determined opposition, and employ every legitimate means to resist and overthrow it. Such opposition would be simply a duty of religion, not more obligatory on me than on other pastors of souls; and I have no doubt but it would be discharged by the clergy with union and energy. I hope, and love to think, that results the very opposite of these will be the object of all future laws, applicable to this neglected and distracted country. Need I add that every effort of the State to improve by legislation or otherwise the condition of our people shall always receive our most cordial commendation and support.

With sincere wishes for the happy issue of the labours of your Commission,

I have the honour to be, &c.

The Right Hon. Lord Chelmsford.

The Bishop of Llandaff.

No. 31.—The Lord Bishop of LLANDAFF.

SIR, 6th December 1865.

I BEG to send two more communications that have been addressed to me upon the subject of marriage by my rural deans.

They refer rather more perhaps to the question as to the number of marriages in the churches and chapels, &c., than to the particular matters of inquiry by the Commission, but I send them because they bear upon the course of proceeding in the Registrar's Office, which all appear to agree in thinking a source of evil.

I remain, &c.

(No. 1.)—The Rev. EDMUND LEIGH.

The Parsonage, Tredegar,

MY LORD, 2nd December 1865.

I HAD occasion to go this week to the Registrar's Office in this town, and made enquiries with a view to supply your Lordship with materials in the things enquired of by Lord Chelmsford. I found the returns of marriages for this district alone (leaving out Rhymney and Bidwillby) to be thus :—

	Church.	Chapels.
September 1864 -	- 8 -	- 51
December 1864 -	- 13 -	- 71
March 1865 - -	- 8 -	- 48
July 1865 - -	- 15 -	- 36

N.B.—The term "chapels" includes the marriages done in the office. Those in the *chapel buildings* are comparatively few.

Upon my asking where the notices were put up in the office, the deputy registrar went into an obscure corner, where they *would not be seen unless especially called attention unto*, and brought me a large file of them. Secresy at any rate is secured by the people who marry in this office, and that is the main reason I am convinced after many year's experience why there are so few marriages solemnized in the church and so many in the registrar's office.

I have the honour to be, &c.,

EDMUND LEIGH.

P.S. If there is anything besides in connection with this subject your Lordship would desire me to ascertain I shall be happy to do so.

(No. 2.)—Rev. E. HAWKINS, M.A.

THAT the comparative decrease of marriages according to the rites of the Established Church within the last few years, as appears from the Registrar General's return is *partly* owing to the objection felt to the publication of banns, I think most probable; as doubtless the names of parties seeking marriage are thus more effectually published, than by the notice to be given to the superintendent registrar previous to marriages at the dissenting chapels, or at the register office.

For what is the course to be followed by those who choose to be married *out* of the church? On the notice being filled up and signed in the presence of the registrar according to the form specified in the Act, it is filed and suspended on the wall within the register office for 21 days, which (since the reading of such notices before the Board of Guardians by the 19th & 20th of Vict., c. 119, is now dispensed with) is *the only publication it has*. And as there are often 20 or 30 such notices strung together, it must be a much less effectual way of publishing the names of the parties to be married, than the course prescribed by the Church.

Few of us, however, I presume would desire to have the preliminaries to the solemnization of matrimony less public than they are at present, and therefore a simple remedy seems to suggest itself for securing at least an equal publicity to what is given in the Church, namely, that the names of the parties should be published, as with us, in the building where the marriage is to take place, during the time of public service. To this, however, I believe the Dissenters generally have a strong objection, and therefore I suppose that such a provision would not be consented to. But would there be an objection to the names of those seeking marriage being suspended for the usual period within the chapel where it is to be solemnized? This, I think, would be an improvement upon the present mode.

Although, however, the provision for publishing the names through the notices to be given to the superintendent registrar, is, I conceive, much less effectual than that made by the Church; *the particulars required* from the party giving notice of a marriage to the superintendent registrar are fuller and more specific than we have the power of requiring, especially as to the consent of parents in the case of persons under age, and as to security against marriages within the forbidden degrees of kindred and affinity. At the time that notice is given for a marriage to take place, either in a dissenting chapel or at the register office, a declaration is to be signed by the party giving it in the presence of the registrar to the effect that there is no impediment of kindred, or alliance, or other lawful hindrance to the marriage intended, and that the parties to the said marriage have for the space of seven days immediately preceding the giving of such notice (or if a marriage by licence for 15 days) had their usual place of abode within the district of the superintendent registrar, and that if either of the parties be under age the legal consent to the marriage has been obtained. It is true, that previous to granting a licence for a marriage in the Church, these facts are sworn to by the person seeking the licence, and I think that some such declaration should be required before the publication of banns.

One cannot help feeling a strong objection to that class of marriages which seem to have increased much of late, I mean those that take place at the register office. The separation of all religious rites from an event in which the happiness and well-being of the parties interested are so deeply involved, seems scarcely consistent with the spirit of Christian legislation. I always considered this enactment an unreasonable condescension to ultra-liberal opinions, which I feared would be productive of evil, inasmuch as it would have a tendency to weaken religious influence on the hearts of the people, and to make the conjugal tie less binding upon the consciences of those who should have recourse to such marriages. However, I presume there is little prospect of this provision being changed; though I think it would scarcely be passed at the present time. It is but fair to add, also, on this point, that the superintendent registrar of Newport, a man of considerable experience, whom I believe to be a conscientious man, and, though a Dissenter, opposed to these marriages, on the ground of their secularising influence on the people, is of opinion that the preference given to them is chiefly owing to their being less expensive than those solemnized in the Church or in dissenting chapels, and that comparatively few adopt them from any objection to the religious rite.

No. 32.—The Right Rev. JAMES DONNELLY, D.D., Roman Catholic Bishop in Ireland.

MY LORD,

I RECEIVED in May last a circular from your Lordship as Chairman of the above Commission, asking information on the practical working of the present marriage laws, and whatever suggestions I had to offer towards improved legislation on the subject of marriage. I have been since considering what reply I should make; the defects to be pointed out, the disabilities we Roman Catholics labour under in the matter of marriage, and what I would suggest to be done; but I now believe the shortest and most satisfactory course for me to adopt is to convey to your Lordship most respectfully my *substantial* adhesion to the sentiments and suggestions set forth in the reply which your Lordship has received already from the Roman Catholic Archbishop of Dublin and the other Roman Catholic Bishops of the ecclesiastical province of Dublin. These statements and suggestions I would pray your Lordship and the other members of the Commission to take into serious and effectual consideration.

I have the honour to remain, &c.

No. 33.—The Right Rev. CORNELIUS DENVIR, D.D., Roman Catholic Bishop in Ireland.

MY LORD, Belfast, 9th December 1865.

HAVING received your Lordship's letter of 25th May last, when by advice of my physicians I was about to go to Vichy for the recovery of impaired health, and having had not sufficient time for the consideration of the very important points therein contained, I awaited my reply until I should have conferred with some of the Irish Catholic bishops on the subject. I have lately seen the joint opinions of the archbishop and bishops of the province of Leinster respecting this measure now in contemplation, and as it coincides in every point with my views, I now write to inform your Lordship very respectfully that I adopt in their entirety the suggestions therein expressed.

I have the honour to remain, &c.

No. 34.—The Lord Bishop of LLANDAFF.

THE Bishop of Landaff begs to send this letter addressed to him by one of his rural deans.

The writer was vicar of Aberdare, a populous place, before he became rector of Merthyr Tydvil.

Bishop's Court, Llandaff,
Dec. 12, 1865.

The Rev. JOHN GRIFFITH.

Gwaclod y Garth, Merthyr Tydvil,
8th December 1865.

MY LORD,

THE great defect of the present Marriage Act is the facility it offers to clandestine marriages. Nor do I see how it is possible that this can ever be remedied so long as the present system obtains.

Take the working of it, for instance, in this union, which numbers over 100,000 people. When a couple wish to be married, all they have to do is, that one of them should go to the registrar, pay 1*s.* 6*d.*, give their names, answer certain questions, and wait 15 days and then be united.

No one need know of their intention, except themselves and the registrar. For the intention is taken down, and the marriage takes place in the registrar's room, which is professedly a *public* room, but to all intents and purposes a private room at the registrar's office. It is so far public only that the guardians pay the registrar for the use of it as a room to marry in and keep the registers; but no one would ever think of entering it unless he had special business to take him there.

I am speaking, of course, of the superintendent's room, where only marriages can take place; in all other cases, such as those of district registrar's, they must take place either here or else in chapels licensed for that purpose.

Your Lordship will thus see how easy it is for a young man living outside of Merthyr parish, say 10 miles off, to come and enter his name at this room, answer certain questions, and be married without anybody knowing it.

But then it is said that if he answer those questions falsely he is liable to an indictment for perjury. My remark upon that is this:—I have been a surrogate of your Lordship's court for more than 15 years; I have been also incumbent of two of the largest parishes in Wales, for a period extending over 18 years, and my experience is this, that in case of matrimony, even *respectable people* do not consider an oath before a surrogate to be practically perjury. I know now both in Merthyr and Aberdare, people who fill a position far above that of the lower orders who must have perjured themselves before a surrogate before they ever got married. Is it to be expected then that working people who do not know the nature of a *declaration* should ever hesitate to make one? Besides, whenever has there been a case when people have been punished for making this declaration? I think myself the legislature to be at fault for placing ignorant people in this position. If what are considered "genteel folks" sometimes do not hesitate to perjure themselves before a surrogate, can you wonder at a working man doing so before a registrar?

There is, in my opinion, but *one* remedy and that is easy enough to *prevent* clandestine marriages. Let every marriage, licensed and unlicensed, in church or in chapel, be first published at some public place in each parish, that is, *exhibited on a board for fifteen* days, so that the public may see them if they have a mind. There *can* be no clandestine marriages then.

To show your Lordship how thoroughly inoperative the last improvement in the Marriage Act has been, I have only to quote the statistics of marriages for one year in the parish church of Merthyr, that is, a year after the alteration, and a year previous to the alteration. I refer to publication of banns in *Board of Guardians'* rooms, which was not thought sufficiently *public*, and to amend it, the Legislature thought it would be *more* public to have them posted up in the superintendent registrar's room, which, as I have shown above, nobody but those who intend to marry ever think of entering.

While the old system of publication at Boards of Guardians was going on, there were married in the parish church of Merthyr, in the year ending June 1854, *one hundred and fifty-five couples*. In the year ending June 1865 we had only *fifty-seven*. In the year ending June 1865 there were married in the registrar's room *after* the new Act came into operation *six hundred and thirteen couples*.

I don't think I need make any comment after this, unless it be, and I hope your Lordship will pardon me for saying so, that the new Act, which was passed expressly to make the publication of marriages by the registrar *more public*, be really in operation, an Act expressly passed to render *clandestine marriage more easy*.

I am, &c.

No. 35.—The Rev. JAMES MACFARLANE, D.D., Moderator of the General Assembly of the Church of Scotland. The Moderator of the General Assembly of the Church of Scotland.

Edinburgh, December 1865.

MY LORD,

I HAVE the honour to state that I submitted your Lordship's letter on the subject of the Commission on the Marriage Laws to the General Assembly of the Church of Scotland, and that the assembly appointed a committee of their body, composed of ministers and elders from different districts of Scotland, to take the same into consideration.

At a meeting of that committee, held here on the 18th December current, the committee were unanimously of opinion, that it did not fall within their province as a committee of the Church to express an opinion upon the constitution of the marriage contract (religious and secular), its proofs, its registration, and the preservation of the evidence respecting it, although your Lordship had courteously put it in their power to do so; and they accordingly directed their attention to that part of the subject on which your Lordship states that the Commissioners are more particularly anxious to receive information, viz., the practical operation of the present law in those places with which they are best acquainted. With reference to this, they desire me to state, that no member of the committee present at their meeting was cognizant of any practical evils that had resulted in his own district of country from the Law of Marriage as it now exists in Scotland, and that their impression is very strong, that were the inquiry prosecuted, such would be the answer generally received from persons similarly connected with other districts of Scotland.

I have the honour, &c.

No. 36.—The Rev. DANIEL M'GETTIGAN, D.D., Roman Catholic Bishop in Ireland. Bishop M'Gettigan.

Ballyshannon, Ireland,
16th December 1865.

MY LORD,

I HAVE duly considered the various questions to which your Lordship's letter of *last May* directed my attention, "respecting the state and operation of the various "laws now in force in the different parts of the United "Kingdom of Great Britain and Ireland with respect to "the constitution and proof of the Contract of Marriage, "and the registration and other means of preserving "evidence thereof."

When preparing the answers to be forwarded to your Lordship with a view of their being submitted to the Commission issued by Her Majesty to inquire into and report on these important subjects, I received a copy of the reply drawn up by the Roman Catholic Archbishop and Bishops of the province of Dublin, and I find the matters mentioned in your Lordship's circular so fully discussed in that reply that it would be deemed a waste of your valuable time for me to trouble your Lordship with a separate answer.

Fully concurring in the sentiments set forth in the reply prepared by the Roman Catholic Bishops of Dublin, I adopt them as my own, and take leave to refer your Lordship to them as expressing mine.

I have the honour, &c

No. 37.—The Right Hon. the Lord Provost of EDINBURGH.* The Lord Provost of Edinburgh.

City Chambers, Edinburgh,
2nd January 1866.

MY LORD,

I HAVE had the honour to receive your Lordship's letter of 8th June last, requesting me to offer the Marriage Law Commissioners any observations and suggestions that may occur to me with respect to the constitution and proof of Marriage.

I cannot profess to have given this deeply-important subject such full consideration as would justify me in submitting to Her Majesty's Commissioners any detailed statement of my views. I shall only venture to say that I lament the loose and unsatisfactory mode in which marriage may be constituted in Scotland, and the diversity of the laws which regulate and affect that contract in England, Scotland, and Ireland.

The relations which subsist between the three countries are now so close, and the interests which are affected by the marriage contract are so vital, that I venture to hope some well-considered measure will be carried through Parliament for the assimilation of the Marriage Laws of the different parts of the United Kingdom. In any case I desiderate such an amendment of the law in Scotland as, by means of registration or otherwise, shall secure uniformity and certainty in the constitution of Marriage and avoid the numerous questions on that subject which appear to me to be most unseemly.

Permit me to add, that should the Commissioners resolve to pursue their inquiries in person in this city, it will afford me the greatest pleasure as chief magistrate to afford them all the facilities in my power.

I have the honour, &c.

* William Chambers, Esq., of Glenormiston.

The Registrar General.

No. 38.—George Graham, Esq., Registrar General.

My Lord, 8th February 1866.

In reply to the circular letter addressed to me by your Lordship on 8th June 1865, I now have the honour of transmitting the enclosed memorandum, which I have written respecting the Acts relating to Marriage, which it is my duty to see well administered.

As to the constitution of marriage, some few amendments may perhaps be desirable; but as to the proof of the contract of marriage and the registration and other means of preserving evidence thereof, I am not at present aware of any amendment that is required.

Some Roman Catholic priests and some ministers of certain denominations of Nonconformists have lately expressed to me a wish that the law should be so altered that in solemnizing marriages in their chapels it should not be necessary for the parties married to make in the presence of the Registrar of Marriages and the witnesses the two declarations in the 20th section of Act 6 & 7 Will. IV. c. 85. They represent that their congregations think it hard that their priests and ministers cannot of themselves alone solemnize the marriage, as in the Established Church, in the absence of the civil Registrar of Marriages, and without these two declarations being absolutely essential and necessary.

I am of opinion that there is no just ground for this complaint, and that it is not advisable to make this proposed alteration, seeing that the presence of the Registrar of Marriages is required at every marriage for the purpose of ascertaining that the proper certificate or licence is produced, and for the recording of the particulars in the Marriage Register Book.

But there is one point which I think it right to bring under the notice of the Royal Commission on the Laws of Marriage.

It has been lately contended by an Ambassador of a foreign country, and he has been supported as to the correctness of his view by more than one Secretary of State, that within the precincts of his embassy in England marriages may be solemnized by the chaplain of that foreign embassy between a subject of that foreign power and a *British subject*, although the building be not certified under the Acts 15 & 16 Vict. c. 36, and 18 & 19 Vict. c. 81, nor registered for marriages under 6 & 7 Will. IV. c. 85, and although no certificate and no licence for marriage be granted by a Superintendent Registrar, and although no Registrar of Marriages be present.

6 & 7 W. 4. c. 85. s. 39 & 42.

This may be proper when both parties are subjects of the foreign power, but I entertain a doubt, when a *British subject* is thus married in England, whether the marriage is legal.

I beg to refer the Commission to the opinions stated to have been pronounced in similar cases by former learned Judges, as reported by Shelford on Marriage, page 75, and in Haggard's Consistory Reports, page 138; and I venture to suggest whether it may not be advisable that the Royal Commission should report that this point should be made clear and undoubted by statute.

I have, &c.

Memorandum.

The statutes relating to marriage, which are administered by the Registrar General are,—

6 & 7 Will. IV. c. 85 and 86 -	1836
1 Vict. c. 22 - - - -	1857
3 & 4 Vict. c. 72 - - -	1840
19 & 20 Vict. c. 119 - -	1856
Consuls.	
12 & 13 Vict. c. 68 - - -	1849
India.	
14 & 15 Vict. c. 40 - -	1851

The present law of marriage of Nonconformists, and of Catholics, of Quakers, and of Jews,—although I did not myself approve of *every* alteration made by the Act of 1856 which was a measure introduced into Parliament on the part of the Committee of deputies of the three denominations, not by Her Majesty's Government, having been in operation nearly 10 years,—does not, in my opinion, now need any change, except, perhaps, that greater publicity should be given to notices of marriage by certificate, and that in the case of marriages of minors there should be further proof given than at present of consent of parents, guardians, &c.

19 & 20 Vict. c. 119.

I hold that the safeguards and precautions against clandestine marriages are under these Acts which I administer more efficacious than the practice in the Established Church, in some instances.

When, in 1822, the Act 3 Geo. IV. c. 75, was passed, an attempt was then made to render the publication of banns in the Established Church more stringent, and it was guarded with many conditions; but in practice it was found that too much was at that time required, and that the restrictions were too rigorous. Exact compliance with the new law was uncommon, and consequently many marriages were solemnized which were voidable, and the questions as to the legitimacy of subsequent issue were numerous; therefore, in the following year, Act 4 Geo. IV. c. 76, was passed, repealing the Statute which was found too strict and too exacting; and since that date, 1823, the present practice has been in existence. A mere statement as to the previous residence of the parties appears to be all that is necessary, no proof being required as to condition, or age, or consent of parents or guardians, in case of minors; the book in which the names are recorded is not accessible to the public; and in large urban parishes the publication of banns appears to me to be almost useless. A curate of St. Pancras has told me that on one Sunday morning he published the banns of 99 couples, 198 names.

3 G c. 7

4 G c. 7

But the restrictions in force with respect to the necessary forms preceding the marriage of Nonconformists, and Catholics, of Quakers, and of Jews, are less rigorous than what was required by Act 3 Geo. IV. c. 75, repealed in 1823, but are more stringent, in some cases, than the present practice in the Established Church, and do not appear to me to require much modification.

The first process, in order to a marriage by certificate without licence, is to give a written notice in a form prescribed by Statute, accompanied by a solemn declaration as to several particulars enumerated in the Schedule of the Act, attested in writing by a registration officer; if this notice and declaration be false in any particular, the party convicted suffers the pains and penalty of perjury, of which matter he has due notice, two cautions being exhibited to him previous to affixing his signature.

19 & c. 11

19 & c. 1

Then that notice is entered by the Superintendent Registrar in the Marriage Notice Book, and is exhibited in the Register office of the district, and is always accessible to the public, who has liberty to search and examine it. During the three weeks which must elapse between the entry of notice of marriage without licence, and the issue of the Superintendent Registrar's certificate authorizing the marriage in the Register office, or in the place of religious worship specified in the notice, the proposed marriage may be "*forbidden*," or a caveat may be entered, which, in the interim, stays all proceedings.

19 & c. 1

6 & c. 8 & 1

Then, after 21 days, the issue of the certificate not being "forbidden," and no caveat being entered, in ordinary circumstances the certificate authorizing the marriage is issued; and besides two witnesses in places of religious worship, the officiating minister is generally, and the Registrar of marriage is always present at the ceremony, which takes place between the hours of 8 and 12 with open doors; and in Register offices the presence of the Superintendent Registrar is required, in addition to the Registrar of marriages; the Register book is signed by the persons married, by the witnesses, by the officiating minister, if any, or the Superintendent Registrar, and by the Registrar of marriages, a caution being previously exhibited.

6 & c. 8

6 & c. 8

6 & c. 8

6 & c. 8

With respect to marriages by licence in the Established Church, no interval, during which inquiry may be made by parents or guardians, is necessary between the application for the granting of the licence and the solemnization of the marriage; and a clergyman holding the office of surrogate, after administering to one of the parties to be married the oath that there is no legal impediment, may grant a licence for a marriage in his own church, which he himself may in a few minutes be called upon to celebrate. I know a case where, on 27th March 1865, A. and B. coming at 10.30 a.m., to the church of the ecclesiastical district in Islington, in which they resided, demanded to be married immediately; they produced no licence, but they were told at the church that by going to Doctors' Commons they might obtain a licence and be married that morning. A. went accordingly, and returned with the licence and was married to B. before 12 o'clock that day.

Whereas under the Acts which I administer the notice of marriage by licence, accompanied by a solemn declaration stamped and attested in writing by a registration officer,

must be entered in the marriage notice book, which in the Register office of the district is always open to the public, who have a right to search and examine it; and during an entire day between entry of the notice and issue of the licence, parents and guardians and relations have an opportunity of "*forbidding*" the proposed marriage or of entering a caveat, which immediately stops further proceedings. At the celebration of the marriage by licence, either in a place of religious worship or in a register office, the same persons are present and the same forms are gone through as have been mentioned above in the case of marriages by certificate.

In distributing cautions, every care is taken to prevent irregular and clandestine marriages being celebrated, in the hope of enforcing compliance with the existing law in every minute particular.

Regulations strictly defining the duties of Superintendent Registrars and Registrars of marriages are printed for their use, as approved by Secretary of State for the Home Department.

Licences for marriage in churches or chapels according to the rites of the Church of England are not granted by Superintendent Registrars.

No marriage by certificate granted by Superintendent Registrar can be solemnized in any church or chapel of the Church of England nor in any Dissenting place of worship, whether by certificate or by licence, without the consent of the minister previously obtained.

After a marriage in a Register office, if the parties wish subsequently to add the religious ceremony used by the church of which they are members, ministers are permitted to read or celebrate the marriage service of the church or persuasion to which they belong.

Facilities are afforded for marriage in England when one of the parties resides in Scotland or Ireland, a certificate of proclamation of banns in Scotland, and a certificate for marriage issued by a Registrar in Ireland, being considered equivalent to a certificate for marriage granted by a Superintendent Registrar in England.

Provision is also made for marriages being celebrated in a registered building in an adjoining district in certain cases, and also in the usual place of worship of the parties or of one of them.

Registered Building.

In the first instance it is necessary that it be *certified;* then a trustee or proprietor and 20 householders, having used it as a place of worship during 12 months, must in writing ask that it be *registered for the celebration of marriages* at the General Register Office, for which they pay a fee of 3*l*. That registration is published in the London Gazette and in country newspapers, and is recorded in a book in the register office of each district, and a certificate on vellum is given to the trustee or proprietor of the chapel.

When a chapel is rebuilt or comes into possession of another congregation, the registration is cancelled, and the same forms are gone through for registering the substituted building.

If it should be entirely disused for religious worship, the registration is cancelled and marriages can no longer be celebrated in it; such cancellation being published in the London Gazette and in the country newspapers.

Register Office.

A ground plan is submitted to the Registrar General, and it cannot be used until approved by him in writing.

Superintendent Registrar.

Before approval of his appointment, inquiries are made as to his qualifications; he is generally a solicitor and clerk to board of guardians; he must enter into a bond for the proper performance of his duties.

Registrar of Marriages.

Before his appointment is approved by the Registrar General his qualifications are investigated. He and the Superintendent Registrar can be dismissed from office by the Registrar General.

It is felony for any persons to solemnize marriage in a chapel or register office not specified in the notice and certificate or licence, or within the time which should elapse between the entry of notice and issue of certificate or licence, or in the absence of a Registrar of Marriages. It is also felony for a Superintendent Registrar to grant a certificate or licence until the days fixed by statute have elapsed after entry of notice, or after three months have passed since entry of notice, or to issue a certificate when a marriage has been "*forbidden*" by an authorized person, or to solemnize in a register office any marriage declared to be null and void.

Thus with the respect to the giving of notice of marriage, and the making of the declaration, and the issue of the certificate or licence, and the registration of Roman Catholic and Nonconformist chapels, and the approval of the register office, and the appointment of the Superintendent Registrar and Registrar of Marriages, almost every precaution is taken that seems desirable. The penalties also for any infraction of the same are very severe. Altogether I see few alterations that are now required. 6 & 7 W. 4. c. 85, s. 38, 39, 40, 43. 19 & 20 Vict. c. 119, s. 2, 18, 19. 21 & 25 Vict. c. 35, s. 35, 36, 37.

With respect to the registration of marriages, I think that there should be no change. There are about 1,070 Registrars of Marriages to whom this duty is entrusted; their register books are kept by them in iron boxes provided by Her Majesty's Government. I consider this system of registration by approved civil officers much preferable to the practice in Ireland, where to the ecclesiastics, the ministers of Presbyterian and other Dissenting chapels, this important duty is confided. 6 & 7 W. 4. c. 86, s. 17. 6 & 7 W. 4. c. 86, s. 14. 6 & 7 W. 4. c. 85, s. 23.

In England and Wales in 1864 there were only 24,286 marriages celebrated in Roman Catholic and Dissenting chapels, of which there are more than 5,200 where marriages may be solemnized. If the ministers of these chapels, as has been sometimes suggested, were empowered to keep registers, as is done by the clergy of the Established Church, 10,400 books must at once be furnished for their use; and these important public records would not be in the same safe custody that registers of marriages now are—deposited in iron boxes ordered to be kept always locked in the residences of approved civil officers serving under the Registrar General; and when filled the register books are confided to the custody of 641 Superintendent Registrars who preserve them in fireproof repositories in the register offices provided by the boards of guardians. These civil officers are frequently visited at unexpected times by inspectors of registration, who report weekly to the Registrar General as to the mode in which entries are made; and, when deficiencies are manifest, either from inattention or old age, the Registrar General sees that efficient successors are nominated. Erasures are positively forbidden, and every correction made *before* the entry is completed and signed, is numbered consecutively from beginning to end of register, to guard against improper unauthorized alterations. *After* the entry has been completed and signed, corrections can only be made in strict accordance with 44th clause of the Registration Act. The inspectors also insist that the Superintendent Registrars take good care of the register books confided to their custody, and make indexes of each name in every register book alphabetically arranged for the convenience of the public, who may demand access to the indexes for the purpose of obtaining certified copies. 6 & 7 W. 4. c. 85, s. 24. 6 & 7 W. 4. c. 86, s. 9. 6 & 7 W. 4. c. 86, s. 44. 6 & 7 W. 4. c. 86, s. 36.

I think that departure from the present practice would be most unsafe; upon an average there would not be five marriages recorded in each book in each year. In a register book containing 500 entries a century would elapse before it was filled; during that time entrusted to the care of officiating ministers frequently changing, what would become of them? Then, also, how would the facts be recorded? I answer, in many cases in a manner most slovenly and most inaccurate. Ecclesiastics, from the experience I have had of them, cannot be considered expert at what may be termed this civil duty of registration. During the last 23 years I have seen the copies of registers made annually by upwards of 12,800 clergy of the Established Church; they are bad registrars, and the numerous and extraordinary mistakes they make, rendering their register books of much diminished value as public records, are marvellous.

At one period Parliament seems to have entertained the same opinion; for births, deaths, and marriages were not registered by ecclesiastics from the year 1653 to 1694. In accordance with an Act passed in 1653, "an able and "honest person" was chosen by inhabitants chargeable to the poor, to be called "The Parish Register," sworn before a neighbouring magistrate to register all births, deaths, and marriages, *instead of the clergy*. Evidence as to the value of parochial registers is to be found in the Appendix to the Report of the Select Committee of the House of Commons on Registration in 1833.

If the clergy of the Church of England, who have generally received an excellent education, in many instances perform this duty in a manner far from satisfactory, what is to be expected of the ministers of these 5,200 places of

The Registrar General.

religious worship registered for the celebration of marriages?

Before the non-parochial registers were deposited in my charge at Somerset House and made legal evidence, a Commission was appointed in 1838 to inquire into the state, custody, and authenticity of all registers submitted to them by Nonconformist congregations; although nearly 9,000 books were found to be "accurate and faithful," still it was necessary to reject many which were so carelessly kept as to be worthless as evidence. The Commission say, "Documents derived from such different sources, viz. from "religious congregations, scattered throughout England "and Wales, as well in agricultural and sequestered dis-"tricts as in populous and flourishing towns, are likely to "present various shades of difference."

But in addition to what I anticipate as to the faulty execution of the work proposed to be entrusted to them, and as to the insecurity and probable loss of the public records, there is also to be considered the subject of expense which would attend this change of system:

6 & 7 W. 4. c. 86, s. 30.

1st. There would be the cost of 10,400 separate books for registration in duplicate, and forms for certified copies to be sent to each chapel.

1 Vict. c. 22, s. 27.

2nd. There would be the annual sum of nearly 600*l.* to be given to the ministers, for furnishing copies to be transmitted to the General Register Office, at 6*d.* per entry, as is now given to the clergy of the Established Church.

3rd. There would also be the annual sum of above 1,000*l.* to be given to registrars of births and deaths for collecting four times in each year the certified copies, which ought to be made quarterly by each minister of these 5,200 chapels, as is now paid for collecting the copies of marriages from the clergy of the Established Church.

4th. There would be an increase of expense in providing a larger establishment of clerks in the General Register Office at Somerset House to meet the increased labour which wou'd result from this change; for not fewer than 20,800 additional separate returns of marriages, or certificates that none had been celebrated, would be received every year.

Moreover, it would be impossible to obtain regularly all returns from this large number of Roman Catholic and Nonconformist ministers. A penalty of 10*l.* for neglect might be imposed by Act of Parliament, but practically I am certain that every year many returns would never reach the General Register Office. The consequence would be that one of the objects of passing Acts 6 & 7 Will. IV. c. 85 and 86 would be defeated; a record of *every* marriage would not be found at Somerset House; the great index of names which ought to include the name of every person married in England and Wales, and which costs so much money, and is now, I hope, creditable to this country, would be incomplete; nor could I annually publish and present to Parliament statistics on the subject of marriage, for the correctness of which I could, as at present, ask for the confidence of the public; they would be imperfect and not to be relied on.

1 Vict. c. 22, s. 28..

6 & 7 W. 4. c. 86, s. 37.

6 & 7 W. 4. c. 86, s. 6.

Therefore I am a strong advocate for the marriages of Roman Catholics and Nonconformists continuing to be recorded as at present by the civil registration officers rather than by the ecclesiastics.

14 & 15 Vict. c. 40.

With respect to marriages of persons professing the Christian religion in India, I do not know of any alteration being required.

As to marriages of British subjects abroad by Her Majesty's Consuls, I am not aware of any change that is required. I generally receive from the Consuls copies of about 200 marriages every year. They are indexed at Somerset House, and are accessible to the public

12 & 13 Vict. c. 68.

Marriages are solemnized by ministers of the Church of England in embassies and in chapels of British factories and "within the British lines," by chaplains, &c. Certificates of these marriages are not sent to the General Register Office at Somerset House, but to the Bishop of London's Diocesan Registry in Doctors' Commons, pursuant to an arrangement published in the London Gazette on 23rd March 1816.

4. G. 4. c. 91.

GEORGE GRAHAM,
Registrar General.

General Register Office,
Somerset House,
8th February 1866.

TOTAL NUMBER of MARRIAGES, and the Number celebrated at the Offices, and in the Presence of the Superintendent Registrars, in

ENGLAND AND WALES.

Years.	Total Marriages solemnized.	Number of Marriages in Superintendent Registrars' Offices.
1841	122,496	2,064
1842	118,825	2,357
1843	123,818	2,817
1844	132,249	3,446
1845	143,743	3,977
1846	145,664	4,167
1847	135,845	4,258
1848	138,230	4,790
1849	141,883	5,558
1850	152,744	6,207
1851	154,206	6,813
1852	158,782	7,100
1853	164,520	7,598
1854	159,727	7,593
1855	152,113	7,441
1856	159,337	8,097
1857	159,097	9,642
1858	156,070	9,952
1859	167,723	10,844
1860	170,156	11,257
1861	163,706	11,725
1862	164,030	12,723
1863	173,510	13,589
1864	180,387	14,611
1865	Abstracts not yet prepared.	

(Signed) GEORGE GRAHAM,
Registrar General.

General Register Office,
Somerset House,
8th February 1866.

No. 39.—GEORGE DALZIEL, Esq., W.S. Edinburgh Convener of the Marriage Laws Committee of the Free Church of Scotland, to the SECRETARY.

5, Thistle Street, Edinburgh,
26th Feb. 1866.

SIR,

I BEG leave to send you enclosed report on the state and working of the Marriage Laws in Scotland, prepared by the Committee appointed by the General Assembly of the Free Church of Scotland, in answer to the communication sent to the General Assembly from the Royal Commission on the Marriage Laws of the United Kingdom; and I have to request you will have the goodness to lay the same before the Royal Commission, and to acknowledge receipt of this communication.

I remain, &c.

REPORT of COMMITTEE appointed by the General Assembly of the FREE CHURCH OF SCOTLAND to communicate Information to the Royal Commission on the Marriage Laws of the United Kingdom regarding the PRACTICAL STATE and WORKING of the MARRIAGE LAW OF SCOTLAND.

IT seems scarcely necessary to inform the Royal Commission of the state of the Marriage Law of Scotland, but as it is one of the points upon which Lord Chelmsford has requested information in his letter, the Committee beg to point out its leading features.

I. By the law of Scotland marriage is *constituted* by consent alone, like any other civil contract, and may be proved by any sufficient evidence showing serious and deliberate consent of the parties.

By the Act of 1567, c. 15, marriage is declared "*as lawful* "*and as free as the law of God has permitted the samen;*" and, as the present Lord President McNeill said in the House of Commons, "that which by the law of God and "the law of Scotland is marriage, the people of Scotland "wish to be allowed to prove by all the evidence of which "it is susceptible."

More particularly marriage may be proved,—

1. By declaration before witnesses.
2. By written declaration without witnesses.
3. By cohabitation as man and wife, with *habit and repute.*

4. By promise made in writing or admitted by the party *subsequente copula*.

When the declaration is in presence of a clergyman, and after publication of banns, it is a *regular* marriage; all others are irregular, and such of these as are entered into before a person professing to act as a religious celebrator, without being a minister of religion, expose the parties, celebrator, and witnesses to certain penalties.

II. The consent of parents and guardians does not enable *pupils* to marry, and is not necessary to the marriage of *minors*.

III. Marriage cannot be entered into by parties within certain degrees of *consanguinity or affinity* forbidden in the Word of God. *Vide* Confession of Faith, 24 William and Mary, 1690, c. 5.

IV. Children born illegitimate are legitimated by the subsequent marriage of their parents.

This state of the Marriage Law is in unison with the religious convictions of the Scottish people, in harmony with the confession of faith acknowledged by the Scottish churches, and in accordance with the character and social sentiments of the population.

In regard to the second branch of the subject mentioned in Lord Chelmsford's letter, viz., the practical working of the Marriage Law, the Committee beg to state that they are of opinion that the present state of the law is favourable to the morality and well-being of the people, and that any radical change in the law affecting the constitution of the contract would be injurious, the Committee are convinced that the immorality and illegitimacy which exist in Scotland, although not in a greater proportion to the population than in other countries, have no connexion with the Marriage Law. They believe that if an artificial formal system were substituted for the present law both immorality and illegitimacy would be increased. This is the opinion of nearly all intelligent persons who are acquainted with the social state of the people. There has been much exaggeration in the statements of certain English journalists and lawyers on this subject. The public opinion of Scotland is strongly in favour of regular and solemn marriages *in facie ecclesiæ*, and is against clandestine marriages; but it is also strongly in favour of allowing the latter to be established by competent and sufficient evidence. According to the registrar's returns since the year 1855 the number of regular marriages in Scotland have averaged about 20,000 annually, while the irregular have numbered only 20.

There is reason to believe that there are more cases of bigamy and of seduction under the more formal system of the English law than under that of Scotland.

The Committee are of opinion that the practical tendency of the Scottish Law of Marriage is to remedy many of the evils resulting from illicit connexion between the sexes, and as such is favourable to morality and good order.

Instead of leaving a woman to dishonour and ruin who has yielded on the faith of a solemn promise of marriage, and enabling her seducer to escape, the law protects the weaker party, and gives her the rights of a wife, and her children the status of lawful children.

In regard to marriage by cohabitation and habit and repute, it affords the sanction of a virtuous connexion to that which may have commenced in irregularity, while it is fitted to deter licentious men from indulging in concubinage under the veil of a pretended marriage.

It gives effect to the mutual consent of the parties evidenced by a course of conduct more publicly and unequivocally than any one formal act or declaration before a registrar or clergyman, while the doctrine of *legitimation per subsequens matrimonium* tends to convert a relation which was injurious into one which is beneficial to society, and to give all the children of the same parents the benefit of the same status.

There is one improvement in the practical working of the law which *is urgently* required, viz., in regard to the publication of banns which is necessary in the case of a *regular* marriage *in facie ecclesiæ*.

The present system is now admitted to be inefficient as a means of publication; secondly, it is much complained of in consequence of the fees exigible by the session clerks. The exaction of these fees prevents many of the poorer class in large towns from going through the ceremony of marriage before a minister. The present system ought to be altered, and a cheap and ready mode of publication substituted. The remedy proposed in Lord Rutherford's Bill on this point is simple: a notice to the registrar seven days before the marriage, to be by him published on the doors of the parish church or otherwise.

The Committee take this opportunity of bringing under the notice of the Royal Commission the state of the Marriage Law regarding Scotsmen resident abroad.

The Free Church Marriage Laws Committee.

The Act 4 Geo. IV. c. 91. recognizes the validity of marriages in the chapel or house of any British ambassador or minister, or in the chapel of any British factory when solemnized by *a minister of the Church of England*. For example, the Scottish Presbyterian ministers established at Florence and Leghorn cannot legally solemnize the marriages of members of their flocks at the embassy in Florence. As the ambassador is the representative of Her Majesty for the benefit of all Her Majesty's subjects, the privilege granted by the aforesaid Act ought not to be confined to ministers of the Church of England, but extended to Presbyterian and all other ordained ministers. Cases have occurred in which the ambassador has permitted such marriages to be celebrated, but doubts exist in regard to their validity in consequence of the terms of the above-recited Act.

By 12 & 13 Vict. c. 68., intituled "An Act for facilitating "the Marriage of British Subjects in Foreign Countries," 1849, such marriages may be solemnized at the British consulate, but there is no consulate where there is an embassy or legation. Further the privilege is hampered with this condition under the last-recited Act, that both the parties must reside for 30 days previous to the marriage within the district of the consul. This is felt to be a hardship and inconvenience to persons in business coming from a different consulate, or from Great Britain, who are thus compelled to be absent from their home and business for 30 days, while the same purpose might be attained quite as effectually by requiring the party to produce a certificate under the hand of the consul or other authority at the place of his domicile that he has resided there for a certain period, and is held and reputed to be an unmarried person.

The Committee earnestly request the attention of the Royal Commission to this subject, which is of much importance to Scotsmen resident abroad.

In regard to the larger question of the state and working of the present Marriage Law in Scotland, they can assure the Royal Commission that it is satisfactory to the Scottish people, who have no desire for any change in regard to the constitution of the contract or the evidence thereof. It is generally acknowledged that the only matter requiring amendment is the publication of banns as pointed out above.

GEORGE DALZIEL,
Convener.

Edinburgh, 26th February 1866.

No. 40.—The ROMAN CATHOLIC ARCHBISHOP and BISHOPS of ENGLAND.

The Roman Catholic Archbishop and Bishops of England.

8, York Place, Portman Square,
London, April 11, 1866.

MY LORD,

WE, the Catholic Archbishop and Bishops of England, who had each the honour of receiving a letter from your Lordship as Chairman of the Royal Commission on the Laws of Marriage, have thought it the most satisfactory course to defer our reply until our annual assembly in London, when we could best express our opinions in a joint letter, the result of our united deliberations.

Your Lordship invites our observations and suggestions upon the whole subject of the marriage contract (religious and secular), its proofs, its registration, and the preservation of the evidence respecting it; and you more particularly request the information we can furnish with respect to the practical operation of the present law in those places with which we are best acquainted, which information extends, in our case, to the whole Catholic community of England and Wales.

It becomes our first duty to acknowledge the consideration and the courtesy of your Lordship and the Royal Commission in giving us the opportunity of presenting our suggestions upon a subject in which we are so deeply concerned; and after careful consideration, we have the honour of submitting to you the following observations.

1. With regard to the general constitution of the Marriage Law as now in force in England, we find that in many respects it works well; but there are several points of detail, which we think are open to considerable amelioration.

2. We, of course, except the Divorce Court from favourable remark, as your Lordship will be aware that in the Catholic Church a valid marriage once fully constituted has ever been held to be indissoluble. With us the contract is not only a natural and a civil, but also a spiritual contract, and a sacrament; and so long as both parties to the contract are in life, neither of them is free to contract anew. This is not merely a point of our discipline, but an article of our faith and a fundamental maxim of our Christian morality.

The Roman Catholic Archbishop and Bishops of England.

3. With respect to the much debated question of marrying a deceased wife's sister, with us the impediment is diriment of marriage; but urgent cases will sometimes arise when the ecclesiastical authority finds it reasonable to remove the impediment by dispensation. And among the motives for such dispensations are, the preventing of greater evils, the protection or reparation of character, the difficulty of forming another marriage, the consideration of children born, or that may be born, &c. And although cases of this kind are comparatively rare, we could wish to see the civil obstacles removed, which stand in the way of remedying what may prove to be grave matters of conscience.

4. As well for the sake of civil order as of morality we consider that, as far as is consistent with securing correct information preliminary to the marriage contract, and with ensuring due evidence of the marriage contracted, it is of the utmost importance that every facility be given for celebrating marriage, and especially as far as the poorer classes are concerned. Unhappily, in these times, it frequently becomes expedient to celebrate a marriage as soon as it is practicable, for the sake of justice, for the protection of character, or on account of pregnancy intervening; and without speedy marriage, the woman may be in danger of being deserted, or abortion may be practised, or child murder, now so prevalent, may be had recourse to. Our police courts show again how many persons there are who live in concubinage, often having families; and this state of things arises not unfrequently, or continues, from unwillingness to face the intricacies and expenses of the registration office, preliminary to marriage. Such persons are often supposed to be married, as well by their children as by their neighbours; and then an obstacle to their marriage will arise from the publicity which they dread by reason of the preliminaries which the law requires. And although those preliminaries, required to be gone through with the registration office, with the clergy, and with the registrar of the marriage, may seem to present few difficulties to those who are familiar with their operation, yet to the uninstructed people coming into contact with them for the first time in their lives, they are intricate, perplexing, and give occasion to a great many mistakes, from which arise delays that harass and distress them, causing loss of their time, which the labouring people cannot command, loss of their work, perhaps even loss of their employment. In country places, where the people are farther away from those who could advise them, from the registration office and from the church, these obstacles of marriage are proportionately increased.

5. Our clergy find the present system of choice left open between marrying at the church or at the registration office to be open to the following abuse. Persons who have some grave impediment, of which one or both are conscious, for example, that of a prior marriage, the having a husband or wife living, it may be in Ireland, in America, or in some distant part of the country, such persons will shun the church, knowing the facilities which the clergy have for disovering the facts and the further facilities presented in the publication of banns in church; and they will have recourse to the registration office for celebrating their marriage, well aware that there they have but little chance of detection. Occasionally they will go to a registration office at a distance, and even assume fictitious names. For the same motive of escaping detection, and for another which will be stated presently, some Catholics will likewise go to the Established Church to celebrate their marriage.

But the final result is this:—On later reflection, they do not believe in their marriage, they know that, either legally, spiritually, on on both these grounds, the contract is invalid; and they either live miserably, or separate, or one abandons the other. In such cases it is not an unrare event for one of the parties to emigrate, to escape at once the twofold difficulty of the invalid marriage and of the law.

6. We find the double fee a great obstacle to conscientious marriage, that is, to marriage in the church, which alone satisfies the conscience of Catholics; and not unfrequently this obstacle will keep persons living on in a state of concubinage.

It is but just, however, to observe, that this obstacle is not occasioned by the clergy, for not only are fees to them quite voluntary, but in some fourth of the cases they receive no fee whatever; and in the average, where the poorer classes are concerned, not more than from one to two shillings are paid them. Indeed, instances are not so very rare, where, to save the persons concerned from an immoral life, the clergy have themselves paid the registration fees.

But the fee of 5*s.* to the registration office and of 2*s.* to the registrar of the marriage have their weight with the poor, and especially at a time when they are incurring other and unusual expenses; and moreover, they are ashamed if they cannot offer something also to their clergy, who, in their estimation, and it is a reasonable one, have had the chief trouble with their marriage; who have had to make all the due inquiries, who have perhaps had to correspond for them to a distance, who have had to instruct them and to prepare them for the sacraments preliminary to that of marriage, and who often besides have to instruct and guide them, or to rectify their mistakes, with respect to the rules of registration.

These remarks will make it obvious to your Lordship why the double fee operates as an obstacle to marriage.

7. But this obstacle becomes much more serious in marriages of conscience, especially where persons have been living for years in a state of concubinage, where a family has come in consequence, and where the fact of their being unmarried is unknown. In such cases it is of the greatest importance that marriage be made as easy of celebration as possible, so that the first good disposition that can be awakened in the offenders may be taken advantage of. But here, again, besides the perplexities which seize upon the imagination of the poor touching the intricacies of the preliminaries, and besides the consideration of the cost, another and a graver difficulty arises, and that is the dread of publicity occasioned by the intervention of two officials besides the clergy.

8. In some instances, the difficulty of teaching the uneducated poor to attend to the preliminary notification of their marriages arises from the fact that in one of our ecclesiastical districts or congregations, two registration districts may be wholly or partially included; and it is hard to make the parties wishing to be married understand that they cannot deal with the same registrar before whom their friends and relations living in the same neighbourhood and under the same priest, and attending the same registered church, have arranged their marriage.

9. For the reasons explained under the five preceding heads, your Lordship and the Royal Commission will not fail to be impressed with the exceeding importance of removing, in all practicable ways, the obstacles which at present stand in the way of ensuring the validity of marriages. And, in so far as Catholic marriages are concerned, after the most careful consideration of the question, we are of opinion that the most effectual remedy for most of the difficulties above alleged, would be to constitute the Catholic clergy the legal witnesses of the marriages celebrated by them, as is the case with the clergy of the Established Church, with the secretaries of the Jewish synagogues, and with the clergy of the Catholic Church in Ireland.

Your Lordship cannot be unaware how strict the clergy of the Catholic Church are in whatever concerns the laws of marriage, and how vigilantly the execution of those laws is watched over by their prelates. It is this strictness and vigilance which furnish the best guarantee against illegal or invalid marriages being celebrated in our churches. Moreover, as so large a portion of our flocks belong to the migratory portion of the population, our clergy need and have facilities at their disposal for making preliminary inquiries in almost any part of the world, which gives them great advantages in guarding against deception.

10. We may further observe that the rites and forms used in the Catholic Church are identical with those of the Established Church, and that the form of contract repeated before the registrar is essentially the same as that which has been already uttered in the religious rite; and this repetition to the registrar of what has been already declared to the clergyman, is apt to have a ludicrous effect, without any comprehensible reason for it.

11. Cases arise where a marriage is valid in civil law, but null and void in face of the Church. In such cases the consciences of the contracting parties have to be satisfied. The law has removed this difficulty in cases where the marriage has been celebrated in the registration office, but not where the marriage has been performed in the Established Church. Thus, whilst an Anglican clergyman is safe from penalties in renewing a marriage celebrated by us, a Catholic priest incurs felony for renewing a marriage celebrated in the Established Church, however necessary it may be for the relief of consciences. We therefore request to draw your Lordship's attention to this hardship, confident that no practical objection can exist against the equalization of the law.

12. With respect to the registration of churches and chapels, the present law requires 12 months' previous notice, the declaration of 20 householders, and a fee of 3*l.* Upon these regulations we have to observe that it is not unfrequent that some new work, mine, manufacture, or other enterprise, suddenly brings together a number of catholic workmen with their families, who have to be provided with a place of worship and a school, and who have to support a clergyman all out of their own industry, and by the joint contribution of small offerings. In these cases, not to speak of others, it is sometimes almost impossible to

find 20 Catholic householders. The place of worship erected is required as soon as practicable for marriages, for the nearest Catholic place of worship may be at a considerable distance, and the fee of 3*l.* becomes an item of some consideration, where everything has to be provided from the pence of the people.

13. We would also suggest that in chapels attached to camps, *e.g.*, Shorncliffe or Aldershot, where none of the congregation are householders, the chapel be allowed to be registered on the certificate of the Secretary of State for War, that the chapel is used for Divine Service.

Respectfully recommending these suggestions to the kind and impartial consideration and eminent legal knowledge of your Lordship and the Royal Commissioners.

We beg to remain,
My Lord,
Your obedient, humble Servants,
✠ Henry Edward Manning.
✠ Thomas Joseph Brown.
✠ William Bernard Ullathorne.
✠ Thomas Grant.
✠ William Turner.
✠ James Brown.
✠ Alexander Goss.
✠ William Vaughan.
✠ William Clifford.
✠ Francis Kerril Amherst.
✠ Ricardus Roskell.
✠ Robert Cornthwaite.

The Lord Chelmsford,
President of the Royal Commission
on the Marriage Laws.

No. 41.—The Rev. Dr. Nathaniel M. Adler, Chief Rabbi, and President of the Board of Deputies.

Office of the Chief Rabbi,
London, 30th April $\frac{5626}{1866}$.

To the Right Honourable Lord Chelmsford,
&c. &c. &c.

My Lord,

I have the honour to comply with your request, to furnish you with any observations and suggestions relative to the constitution, proof, and registration of the contract of marriage, and especially with reference to the practical operation of the present marriage law. I venture to think that you would prefer my limiting my views to the practical working of the Registration Act so far as it affects the Jews, 6 & 7 Will. 4. c. 86, ss. 2, 4, and c. 86. ss. 30, 31. Since the year 1845 I have filled the office of Chief Rabbi of the united congregations of the British empire, and in that capacity the spiritual jurisdiction of nearly all the synagogues in the kingdom devolves upon me. For the same reason nearly all (say seven-eighths) of the legal marriages which have been contracted between Jews since that period have come under my notice, and I am therefore enabled in my humble judgment to afford information on this subject.

I may at once state, as the result of my experience, that this Act has worked well; and, after careful consideration, it seems to me that no alteration in the same is desirable. The Act 19 & 20 Vict. c. 119. s. 22, provides, that 20 householders professing the Jewish religion, and being members of the West London Synagogue of British Jews, or any synagogue in connexion with the same, may certify a person to the Registrar-General to be secretary; and it appears to me to be neither expedient nor judicious to extend these provisions.

I will not dwell upon the fact that the working of an Act intended for a small body, viz., the West London Synagogue of British Jews, and the one at Manchester in connexion with it, cannot be accepted as a guide to the mode in which similar provisions would operate upon the general body of Jews, extending over 44 synagogues throughout the United Kingdom, or upon the secretaries upon which the president of the London Committee of Deputies of British Jews at present exercises superintending power. I may, however, state that any alteration would be contrary to the wishes of the great majority of Jews in the kingdom. There are, besides, arguments involving questions of *Order*, *Discipline*, and the *Constitution of the Marriage Contract*, which, in my humble opinion, militate against the extension of exceptional legislation to the general body of Jews.

I.—*Order.*

1. The Board of Deputies naturally possesses better opportunities for becoming acquainted with the personal character, attainments, and diligence of the secretary of each synagogue. As it requires annual returns from each of the synagogues it exercises a due supervision over the registry, and prevents any irregularity occurring in the same. The Rev. the Chief Rabbi.

2. There are some provincial synagogues which have not a trustee; others in which there are not 20 or 10 Jewish householders. Although there would be a sufficient number to form a synagogue (10 male adults) they would still be prevented from having a certified secretary. In other congregations there would be the required number of (say 10) Jewish householders, but these would consist of members of the same family, to whom it would surely be impolitic to intrust powers relating to questions of legality of marriage and legitimacy of children.

II.—*Discipline.*

1. The provisions of the Act require a synagogue of persons professing the Jewish religion, which signifies a place appropriated to, and set apart for, the public worship of the Jews, and provided with a reader or minister. Hitherto the Board has been made acquainted by the Chief Rabbi, whether a congregation possessed such a real Jewish synagogue or not.

2. Experience has taught me, that petty dissensions, altogether unconnected with religious matters, have sometimes arisen in the smaller provincial congregations. But the intimate connexion subsisting between those congregations and myself or the Board of Deputies, has enabled me or the Board to bring about a speedy reconciliation between the disputants.

III.—*Constitution of the Marriage Contract.*

The Act provides, that every secretary shall satisfy himself, that the proceedings in relation to a marriage solemnized between two persons professing the Jewish religion, of whom the husband belongs to his synagogue, have been conformable to the usages of the Jewish religion. Now, according to the Jewish religion, the marriage is not merely a civil contract, but bears an essentially religious character. From Genesis II, v. 18, where it is declared, that God institutes matrimony, down to Malachi, c. ii, v. 14, where we read that "God is witness between man and the wife of his youth," the idea runs throughout Scriptures, that wedlock is based upon religion. Now, in order to render the marriage normal and valid according to Jewish laws, the following is required:—

1. That it be fully ascertained that the persons between whom the marriage is to be contracted do not stand within the degrees of consanguinity or affinity prohibited by the Jewish laws and the law of the land.

2. *Evidence is needed that both the parties are Jews.*

3. In the case of a widow or a widower, who are about to be married, convincing proof of the death of the former husband or wife is required.

4. Two fit and proper witnesses must be present during the solemnization of the marriage and attest the same.

5. The religious ceremony consists:—

(A). Of the putting of the ring on the finger of the bride by the bridegroom, while pronouncing the words, "Thou art wedded unto me according to the law of Moses and Israel."

(B). The pronouncing of the benediction by the minister before and after the marriage vow (alluded to in Genesis, c. xxiv, v. 60, and Ruth, c. iv, v. 11, 12.)

(C). The publication of the marriage contract (alluded to in Tobit, c. vii, v. 13, 14).

Hitherto all these conditions (involving the necessary investigations and observances) which are indispensable for the marriage being conformable to the usages of the Jewish religion, have been duly fulfilled, as the secretary of the synagogue has stood directly under the control of the authorities. Should this control be withdrawn, there will be no guarantee that the marriage takes place in conformity to the usages of the Jewish religion, as required by the Act of Parliament.

May I beg that your Lordship will kindly submit the foregoing reasons to the consideration of the Royal Commission.

Permit me, in conclusion, to express the hope, that the Acts at present in force, which are applicable to the entire body of Jews will remain unaltered.

With assurances of sincere esteem,
I have the honour to be, &c.

Note.—The following is the text of the passages referred to by Dr. Adler:—

Genesis, c. xxiv. v. 60. "And they blessed Rebekah and said unto her, Thou art our sister, be thou the mother of thousands of millions, and let thy seed possess the gate of them which hate them."

Ruth, c. iv. v. 11, 12. "The Lord make the woman that is come into thy house like Rachel, and like Leah, which

The Rev. the Chief Rabbi.

two did build the house of Israel; and do thou worthily in Ephratah, and be famous in Bethlehem. And let thy house be like the house of Pharez, whom Tamar bare unto Judah, of the seed which the Lord shall give thee of this young woman."

Tobit. c. vii. v. 13, 14. "Then he called his daughter Sara, and she came to her father, and he took her by the hand, and gave her to be wife to Tobias, saying, Behold, take her after the law of Moses, and lead her away to thy father. And he blessed them, and called Edna his wife, and did write an instrument of covenants, and sealed it."

The City Clerk of Edinburgh.

No. 42.—J. D. MARWICK, Esq., City Clerk of Edinburgh.

City Chambers, Edinburgh,
18th May 1866.

MY LORD,

I BEG leave herewith to transmit to your Lordship Extract of an Act of the Lord Provost, Magistrates, and Council of this city relative to the Proclamation of the Banns of Marriage, and I am to ask that you will be so good as submit the same to the Royal Commission on Marriage Laws.

I have, &c.

The Right Hon. the Lord Chelmsford,
Royal Commission on Marriage Laws,
32, Abingdon Street, Westminster.

At Edinburgh, the Eighth day of May, in the year Eighteen hundred and sixty-six;

Which day the Right Honourable the Lord Provost, Magistrates, and Council of the City of Edinburgh being assembled, Councillor Stott, in terms of notice given by him, moved as follows:—"That the present state of the "law as regards Proclamation of Banns of Marriage is "very unsatisfactory; that the fees charged for proclama- "tion vary considerably in different parishes, and in some "are very exorbitant, and not now appropriated to any "purpose in which those paying them have any interest; that "in some places they are so burdensome as to deter many "poor persons from getting regularly married, thus in- "ducing irregular marriages, concubinage, and illegitimacy; "while from the mode in which the proclamations are "made, and the change which has taken place as regards "the proportion of the population attending the Esta- "blished Church, the purpose of proclamation is not "attained; that it ought not to be left to the parish "minister or his Kirk Session to decide on the relevancy of "objections to marriage, or on the sufficiency of the evi- "dence produced in support of them; and that to secure "greater efficiency and conformity of practice throughout "the country, and greater accuracy in the registration of "marriages, the system of proclamation should be placed "under the supervision of the Registrar-General, and the "duties connected with it transferred from session clerks "to Registrars of Births, Deaths, and Marriages, in whose "appointment parishoners of all religious persuasions have "a voice; and that a copy of this resolution be transmitted "to the Royal Commission on the Marriage Law now "sitting." The Magistrates and Council having con- sidered the foregoing motion, adopted the same, and directed an extract of this resolution to be transmitted accordingly.

Extracted from the Council Record on this and the preceding page by

J. D. MARWICK, City Clerk.

The Parochial Board of North Leith.

No. 43.—The Rev. WALTER M. GOALEN, Chairman of the Finance and Law Committee of the Parochial Board of North Leith.

North Leith Parochial Chambers,
Leith, 31st May 1866.

MY LORD,

As Chairman of the Parochial Board of North Leith, I beg leave to hand you the enclosed excerpt from our minutes, with the request that you will be so good as bring it under the notice of the Royal Commission on the Marriage Law now sitting.

I have, &c.

To the Right Hon. Lord Chelmsford,
Chairman of Marriage Commission,
London.

RESOLUTION by FINANCE and LAW COMMITTEE of the PAROCHIAL BOARD of NORTH LEITH at a MEETING held 23rd May 1866. The Rev. W. M. Goalen, Chairman.

"That the present state of the law as regards Proclamation of Banns of Marriage is very unsatisfactory; that the fees charged for proclamation vary considerably in different parishes, and in some are very exorbitant, and not now appropriated to any purpose in which those paying them have any interest; that in some places they are so burdensome as to deter many poor persons from getting regularly married, thus inducing irregular marriage, concubinage, and illegitimacy, while from the mode in which the proclamations are at present made the object of publicity is not attained; that it ought not to be left to the parish minister or his Kirk Session to decide on the relevancy of objections to marriage, or on the sufficiency of the evidence produced in support of them; and to secure greater efficiency and conformity of practice throughout the country, and greater accuracy in the registration of marriages, the system of proclamation should be placed under the supervision of the Registrar-General, and the duties connected with it transferred from session clerks to Registrars of Births, Deaths, and Marriages; and that a copy of this resolution be transmitted to the Royal Commission on the Marriage Law now sitting."

A true excerpt from the Minute Book of the Parochial Board of the parish of North Leith.

WALTER M. GOALEN,
Leith, 25th May 1866. Chairman of Board.

No. 44.—The Rev. H. RENTON, M.A., Convener of the Marriage Laws Committee of the Synod of the United Presbyterian Church of Scotland.

Offices of United Presbyterian Church,
5, Queen Street, Edinburgh, 5th June 1866.

MY LORD,

A LETTER was addressed by your Lordship on May 22, 1865, to the Rev. W. Marshall, Moderator of the United Presbyterian Synod, expressing the desire of the Royal Commissioners engaged in inquiring into the Marriage Laws of the United Kingdom for information, observations, or suggestions upon any of the points embraced in that inquiry.

By an unfortunate mistake that letter was not brought before the Synod at its annual session in May 1865, and no opportunity of calling the Synod's attention to the subject was afforded till next annual session in May last, when a Committee, whose names are subjoined, was appointed "to "take the whole subject into consideration, and to transmit "to the Royal Commission such information and views as "they deem desirable."

The results of that Committee's careful consideration I have the honour to transmit in the accompanying report.

I am not aware that it needs to be supplemented by any explanations or observations, unless, perhaps, on the *fourth* point it may be proper to show for what cases the provision there proposed is sought. Several have occurred in my own pastoral experience. A young man of excellent character removes to a situation in England as gardener or farm steward. He has formed an attachment to a young woman before going away, which is kept up by correspondence. He returns a year or two after to marry her. I am asked to celebrate the marriage, knowing well the parties and families of both. The bride produces the regular certificate of proclamation in her parish. The man produces a satisfactory letter from his employer, and perhaps another from a minister, and friends on both sides may be ready by word or writing to attest that he is unmarried. But I refuse to perform the ceremony, because the only instruments recognized by the existing law to warrant a regular marriage are certificates of publication of banns in Scotland in the parishes where both parties reside, and this publication cannot be made unless a party have resided six weeks in the parish. But how can men in such situations get seven weeks leave of absence or lose seven weeks wages? The hard pressure of the law drives parties occasionally, to their great disappointment and grief, to submit to a form of marriage which is neither illegal nor clandestine, but still irregular. An unreasonable law creates irregular marriage, or rather forces it on unwilling parties.

I have, &c.

COMMITTEE.

Ministers—Rev. W. Lindsay, D.D., Glasgow.
„ H. Renton, M.A., Kelso.
„ W. Marshall, D.D., Coupar Angus.
„ T. Finlayson, Edinburgh.
„ A. Thomson, D.D., Edinburgh.
„ J. Taylor, D.D., Glasgow.
„ J. B. Johnson, D.D., Glasgow.
„ G. C. Hutton, Paisley.

Elders—James Peddie, Writer to the Signet, Edinburgh.
Andrew Fyfe, Solicitor before Supreme Court.
James Mitchell, Dean of the Faculty of Procurators, Glasgow.
Robert Horne, Solicitor, Berwick-on-Tweed.
David Anderson, Merchant, Glasgow.
James Morton, Shipbuilder, Greenock.

Rev. H. Renton, Convener.

Offices of United Presbyterian Church,
5, Queen Street, Edinburgh, 5th June 1866.

REPORT of the COMMITTEE appointed by the SYNOD of the UNITED PRESBYTERIAN CHURCH to communicate to the Royal Commission on the Marriage Laws of the United Kingdom such information and views on the important subject of inquiry as may seem to them desirable.

AFTER consideration of the whole subject submitted in the letter of Lord Chelmsford, on behalf of the Royal Commissioners, to the Moderator of the Synod, the Committee unanimously adopted the following conclusions:—

1. That the principle of the Scotch marriage law ought to be firmly maintained, that mutual consent, voluntarily and deliberately given, *constitutes* marriage, irrespective of religious solemnities or of any ceremony whatever; and that such mutual consent may be established by competent proof of any kind, as more particularly by declaration before witnesses, by written declaration without witnesses, by cohabitation as man and wife *with habit and repute*, or by promise made in writing or admitted by the party *subsequente copulâ*.

2. That the present law is highly favourable to morality and prevents much concubinage and illegitimacy, while regular marriages are so universally required by the discipline of the Presbyterian Churches and by public opinion, that the instances are extremely rare, and in the experience of hundreds of ministers of these churches unknown, in which any others take place among their members, and when they do occur the parties are subjected to ecclesiastical censure.

3. That all that should be required by law in order to regular marriage should be *due notice*, say seven days, to the registrars of the districts in which the parties reside, *and certificate thereof, followed by celebration before witnesses*, whether by a minister of religion or in presence of the registrar.

The system of *proclamation of banns* in the parish church in order to regular marriage was well fitted for the end of publication when it was instituted, but is now wholly unsuitable and open to very strong objections. The purpose of publication is not answered, as the great body of the population have no connexion with the Established Church, and know nothing of any intimations within its walls; and it is notorious that the proclamation of banns in most cases is made before only a handful of people, very frequently only on one Lord's day, and that evasions of even this empty form have not been unfrequent, and are easily effected. Again, the fees charged by session clerks operate as a bar to regular marriage, especially among the poor of large towns, who are not in communion with churches which enforce discipline; and there is no standard of charges, so that in one parish the fees may be double or triple what they are in another. These great evils might all be obviated by simply requiring seven days notice to the registrar of the district in which either party resides, to be publicly exhibited at his office, perhaps outside of it as well as inside; the party, when personally unknown to him, being also required to produce to him an attestation of being unmarried, signed by two householders of the district, leaving to every religious denomination to continue or not, and regulate according to its own pleasure, the proclamation of banns, as it belongs to each to observe its own mode of celebration.

4. That the production of a certificate of registration from any registrar in England in whose district one of the parties resides, transmitted by him through the post office to the registrar of the district in Scotland in which the other party resides, should, with the certificate of the latter, be equally valid for the celebration of the marriage as a certificate from a registrar in Scotland.

5. That in cases of disputed marriage the present law, which renders actions of declarator of marriage competent only before the Supreme Court, involves a process so expensive as in many cases to render its benefits beyond the reach of the humbler classes, to the deepest injury of the wife and children, and that to remedy this great evil jurisdiction should be extended to the sheriffs to dispose of such cases, subject to appeal to the Supreme Court.

6. That for facilitating the marriage of Scotsmen resident abroad a change should be made in the law, providing that the marriage is valid when solemnized at any British Embassy or Consulate by an ordained minister of any of the churches in Scotland; and that where one of the parties may not have resided 30 days within the district of the consul or legation a certificate from the consul or other British authority that he has resided there for a certain period and is held and reputed to be an unmarried person shall be sufficient.

HENRY RENTON, Convener.

No. 45.—JOHN BOYD KINNEAR, Esq., Advocate and Barrister-at-Law.

IN compliance with the request of the Commission on the Laws of Marriage, that I would state my opinion and suggestions on the subject of their inquiry, I respectfully lay before them the conclusions to which I have been brought by long and careful observation of the practical working of the marriage code of England and Scotland.

The subject has for a long time attracted my special attention, not only professionally, in consequence of having, as a member of the bar of both England and Scotland, often to consider the effects of the discrepancy and conflict of the laws of marriage in the two countries, but also because of its deep social importance. But since the conclusions to which I have come are adverse to the general current of opinion in this part of the kingdom, I would beg to be allowed to make two preliminary remarks of a personal character. The first is, that at least I have not been moved by any national prejudice, since my opinions while I knew only the Scottish system, were in favour of the English, and were only changed by the result of actual observation of the working of the English rules. The second is, that there are not, in either country, even among lawyers, many who are fully acquainted with the law of both, and that it is not easy for even those who have the most complete theoretical knowledge of the law of both to form a sound judgment, unless either by long residence in both countries, or by attentive study of the reports of cases in each, they have had opportunity to observe the practical manner in which the legal rules operate.

It may be of service in forming a decision on the relative merits of the laws of marriage of the two countries if we first of all settle in our minds the leading characteristics which the law on that subject ought to present. These may probably be sufficiently expressed by saying that it ought to embrace the maximum of simplicity and the maximum of certainty. Of simplicity, because it affects every class, and almost every person, the most humble and illiterate as well as the most exalted or learned, and because it has to be known and acted on in the absence not only of legal advice, but often in the absence of even ordinary common-sense counsel. Of certainty, because it affects a contract and social relation the most important that can arise between human beings, because it affects the foundations of society itself, and influences the fate, it may be the eternal fate, of innumerable individuals.

It is thus not an unreasonable practical test of the propriety of any marriage code to say that its provisions ought to be such as every woman not only can understand by study, but is correctly acquainted with through the common understanding of society, and that its security should be such that all persons if honestly intending to marry should be able to place their contract, by adoption of the ordinary means, beyond the reach of doubts.

But if the law can secure these two elements of the contract, there seems no other consideration with which it has much concern, or at least in regard to which material differences of opinion can now arise. The degree of solemnity to be affixed to the celebration is now recognized to be matter for the determination of each sect, rather than of the State. The age at which legal marriage may be contracted must be mainly decided by nature, rather than by artificial rule, and is in fact the same in both countries. The consent to be required on the part of parents has been by the progress of the law of England reduced to matter of order but not of validity.

Taking then, first of all, these cardinal points of simplicity and certainty, let us seek to ascertain by a practical examination of cases on which side the advantage lies. In England (leaving out of view for the present all questions of mere order and discipline) it is essential to the validity of a marriage contracted in the most usual mode that it should be,—

1st. Celebrated in a church or chapel wherein banns may be lawfully published.

2nd. After due publication of banns.

3rd. Solemnized by a person in holy orders.

But when we pass beyond this, the most common and regular course, we find that the 1st and 2nd of these requisites may be entirely dispensed with by a special licence; the second by an ordinary licence, provided either is granted by a person duly empowered by law to do so; and that all three may be in part or altogether disregarded by the adoption of the system of notice, or marriage through the medium of the registrar's office. Of the last branch of the system, in so far as simplicity is concerned, I need only say, that I believe very few barristers out of Doctor's Commons could without reference to the statutes state its requisites, and that probably not five women in the kingdom would know where to turn to find these requisites.

It is quite true that the three essential requisites to the validity of an English marriage in its simplest form, to which I have above alluded, demand merely the *bonâ fide* belief of one of the parties in their being complied with to ensure the validity of the contract. By means of this interpretation of the rule a simplicity in such cases is attained which goes nearly as far as anyone can desire. It is, for

John Boyd Kinnear, Esq., Advocate and Barrister.

instance, quite possible that there may be a valid English marriage celebrated in a barn, by a sham clergyman, after publication of banns in false names; devoid in fact of every security for order or publicity which the law has so anxiously devised. For the marriage is void only if both parties "knowingly and wilfully" go through it in defiance of the provisions of the law; and hence, if one of them, whether the man or the woman, is led to suppose that the place is a duly licensed church or chapel, that the apparent clergyman is really in orders, and that the banns have been correctly published, the marriage is indissoluble, though in every or any of these particulars deception has existed. Beyond all doubt this rule is not only merciful, but necessary for the protection of ignorance from the machinations of treachery. But its adoption shows conclusively that real simplicity is incompatible with the strict maintenance of formality.

Nor even by help of this rule is real simplicity and security attained in England. Perfect honesty of intention becomes compatible with gross mistake of the laws. It seems simple and certain enough to say that persons must not wilfully allow banns to be published under wrong names. But suppose there are two Christian names, is the marriage avoided if the one or the other was omitted in the banns? In Wiltshire *v.* Prince (3 Hagg. Ecc. 332), a marriage was held void because the husband had allowed the wife to put up the banns in the name of John Wiltshire, his full name being Henry John Wiltshire. A similar decision was given in the case of Tongue v. Allen, 1 Curt. 38. In both cases the ground of the decision was, not that the one party had attempted to deceive the other, but that there was a disparity of age and station and an intention to evade discovery or publicity. So again, only a year ago, in Wells *v.* Cottam, 3 Sw. & Tris., 364 & 593, a marriage by banns between George Henry Wells and Martha Cottam, the man's name having been altered by himself in the notice given for publication of the banns into that of Henry Wells, for the purpose of concealment, and knowledge of that fact by both parties having been found by a jury, was declared null on the suit of the husband's father, the husband (it appeared) not assenting to the suit, and the consent of the woman to the undue publication having been obtained by the earnest solicitation of the man. And again, the introduction of an additional Christian name may avoid the marriage; Green *v.* Dalton, 1 Addams, 289. Yet in all such cases of omission or addition the rule is not absolutely fixed, but its application or not will depend on the evidence of facts belonging to each case individually. Pouget *v.* Tomkins, 2 Hagg. Consist., 143.

Now though all these are cases in which there had been an attempt to evade the law, there exists also a class of cases in which there had been no such intention, yet in which failure to comply with statutory enactments avoids the contract. Thus in R. *v.* Inhab. of Tibshelf, 1 B. & Ad. 190, it was held that a marriage in which the woman had been described by the name entered in her register of baptism, but so entered by mistake, was void; though the object of all the parties to the marriage had been to conform to the law, and to make the marriage valid. So also in Mather *v.* Ney, 3 Maule & Sel. 265 (and see 2 Hagg. Cons. 254), the woman is said "to have insisted on "having the banns put up in a wrong name in a mere idle "frolic;" and the consequence of the folly was nullity of the marriage. Again, where there has been a change of name (or a name of reputation different from the true name, whether Christian or surname,) it often becomes almost impossible to say what form of publication of banns will constitute a valid marriage. The question how in such cases a valid marriage may be contracted was much considered in R. *v.* Inhab. of Billinghurst, 3 Maule & Sel. 250, and in Wilson *v.* Brockley, 1 Phill. 132, (and cases in notes), but no definite and clear rule was laid down for the guidance of persons so situated.

Yet again, while so slight and immaterial a departure from the demands of the law may avoid a marriage contracted on both sides *optimâ fide*, or may prove perhaps on the suit of only a relative of one of the parties fatal to a contract in which both of them were aware of an error, though one of them was not aware of its legal consequences, there is yet a third class of cases, in which gross fraud either on one side of the parties or on "the law," has been held immaterial. Of this, not to multiply examples, the instance of Wright *v.* Elwood, 1 Curt. 49. may be taken. Here, the woman being actually at the time married, held herself out as a spinster under the name of Emma Elwood, her real name being Amelia, and had the banns so published. Before the consequent marriage was celebrated her first husband died, yet it was held that the second marriage was valid because the deception had only been in regard to her position, which is not a ground for setting aside a marriage, and the husband had not been a party to the use of a false Christian name, by which, in fact, the fraud on him was perpetrated. Again, it is to be kept in view that all the strictness of accuracy demanded in the publication of banns may be evaded if a licence is resorted to. Thus joint fraud by the husband and wife in procuring a licence by him under the name of Margaret Brown instead of Margaret Lee Brown, and by giving false addresses of her and himself, and describing himself by a false occupation, and falsely swearing to her having resided in the parish, (no consummation of the marriage having followed,) were all held insufficient in the very recent case of Brown *v.* MacMahon 2 Sw. & Tris. 230, to set aside the marriage on the wife's petition. The decision went on the ground that the ordinary licence is a dispensation from publicity, and therefore that inaccuracy in the particulars required by the law to be furnished to the granter of the licence, though it may be punishable as perjury, has no effect on the validity of the marriage.

The rules to be deduced from these and the numerous other cases have been stated by Lord Tenterden in R. *v.* Inhab. of Tibshelf: — His lordship there lays down two rules, 1st, that if there has been a total variation of a name or names the marriage between the parties is void, whether the variation has been from accident or design, or fraudulent or not; 2nd, that if there be a partial variation only, as the alteration of a letter or letters, or the addition or suppression of a Christian name, or the names have been used at one time and not at another, it becomes material to inquire into the motives of the parties, for if honest the marriage may be good, if fraudulent it will be bad. It must, however, be remembered that in thus speaking of fraud it is not meant fraud on one of the parties, but "on the law," *i.e.* concealment from the public, or from parents or guardians.

It need hardly however be pointed out that in addition to the frequent injustice such rules must operate, they are so far from being definite that they must introduce frequent doubt. They operate injustice because they may in certain cases allow one of the parties to render the most solemn ceremony nugatory by persuading the other to assent to the omission of what may seem only a superfluous Christian name, or to the use of a name which perhaps may have been sometimes employed before, but has not yet been legally established by complete usage. They operate uncertainty because cases must often arise when it is a question whether the change of name has been total or only partial, so as to bring the case within the first or second category; and because, when partial, they leave the vague inquiry to be prosecuted, what was the motive of the parties, and the degree of assent of each.

But besides all these difficulties in regard to the names, there is also the class of difficulties arising from the place of celebration. It is easy to say that marriages must be celebrated in a church in which banns have been in use to be published. But what is a church? The chapels of foreign embassies have been held not to be a church because banns have not usually been there published. But a marriage in the ruins of a consecrated church has been held valid. So a marriage in the vestry has been lately held valid, Wing *v.* Taylor, 2 Sw. & Tris. 278. On the other hand the legislature is called upon nearly every session, and sometimes several times in a session, to cure defects or doubts in a whole series of marriages which in a course of years have been celebrated in a place ultimately discovered to have not been legally qualified. Take for example a bill of the present session, intituled "An Act to render valid "divers marriages solemnized in the church of Sydmonton, "in the county of Southampton," which proceeds on the preamble that the church or chapel referred to "was "taken down for the purpose of being rebuilt, and a new "church was thereupon erected upon the old foundations, "and opened for divine service on the 28th May 1853, "and divers marriages had been since solemnized therein "under the impression that as the said church was built on "ground heretofore duly consecrated, other consecration was "unnecessary, and no consecration took place until 17th "August 1865."

An example of a different species of ecclesiastical defect is to be found in an Act of last year, one of a very frequent class, intituled "An Act to render valid certain marriages "heretofore solemnized in the Chapel of Ease, called Saint "James the Greater Chapel, in the parish of Lamborne, in "the county of Berks." The preamble bears that said chapel was on 12th April 1853 duly consecrated, but no authority had ever been given by the bishop for the publication of banns and solemnization of marriages therein, and divers marriages had been solemnized in the said chapel under an erroneous impression on the part of the minister thereof that by virtue of the consecration of said church or chapel, or otherwise, marriages might be solemnized therein. In the debate on this bill in the Lords it was remarked there was a very general ignorance among the clergy of the requirements of the law in this respect, and that many instances of equally fatal errors were probably still undiscovered. And it must be remembered that though Parliament may

cure such defects if discovered before they have become the subject of litigation, it would probably refuse to legislate *ex post facto* in the case of litigation having already arisen. Many such Acts indeed contain an express clause declaring that in such a case they shall not operate.

If now we turn to Scotland we shall find that in some at least of the particulars in which complication or uncertainty may arise in England, none can possibly occur in Scotland. In that country it is not essential nor usual that a regular marriage should be celebrated in a church; hence all the class of cases in which statutes are needed to explain what a church is, or to cure mistakes in that regard, has no counterpart in the Scottish reports or statute book. In a regular marriage the publication of banns is essential as matter of order; they cannot be evaded by any licence, and default renders the parties and the clergyman liable to punishment. But neither default nor error avoids the marriage, and hence no question ever arises as to whether there has been due publication or not. Regular marriages, celebrated by a clergyman, form certainly more than 999 in 1000 of the total number contracted; but in the small number of irregular marriages the proof is *generally* equally certain and simple. What is essential in it is that there shall be evidence of present deliberate consent to marry (consent *de præsenti*); or written evidence or admission of a promise to marry, followed by consummation (promise *subsequente copulâ*); or clear evidence of continued reputation (habit and repute). Now it is obvious that where the parties are *honest* there can be no doubt or difficulty in establishing marriage by at least the two former of these methods. They know what they mean, they have only to say it or to write it in any form, and they are free from peril; for no defect in form can affect the substance, no alteration of names can impair the contract, if only identity of person and fulness of intention be established.

The cases, then, in which doubt or difficulty can creep in in Scotland are reduced to a class with which it is not easy to have much sympathy. They are cases in which each party has been endeavouring to outwit the other by using or allowing ambiguous expressions, and in which, therefore, each has *known* that a certain risk was being run; or they are cases in which both parties have not truly meant an absolute marriage, but have tried to achieve a conditional arrangement, which for certain purposes might be used as a marriage, and yet in certain events be disclaimed, and in which, therefore, both must have known the great risk of the contract being declared illegal. Yet of this class of cases, though some conspicuous examples have led them to be regarded as types of the marriage code of Scotland, the number will be found, on examination, to be infinitely small. If we set aside the cases in which the real ground of uncertainty has been a question as to sanity, or sobriety, or personal capacity, or fraudulent deception, in all of which cases the laws of England and Scotland are identical, and of which an equal number of examples occur under the one as under the other, we shall find that during the last two centuries there has not been, on an average, above one case in half-a-dozen years in which any doubt has existed as to the parties being married or not. And if in all these cases the law of England would answer the question in the negative because some matter of form had been neglected, I confess I am unable to see that it is a fault in the law of Scotland that in some it decides in the affirmative, through looking at intention rather than at form.

The practical distinction then between the working of the law in the two countries is really this, that in Scotland none who honestly mean to marry can have a moment's doubt how to do it, or be subject to any apprehension of its being subsequently discovered to have been informal and void. While in England it is often impossible to say (as in case of a change of name or bastardy) how a legal marriage can be constituted save by resort to the exceptional and expensive method of licence; and, though grave deception, practised by the one on the other, still lets the marriage stand good, a small inaccuracy, if sanctioned by both parties, makes it in the power of either, or even of a relative against the wish of either, to convert the marriage into concubinage; while again the place of celebration may often be for years subject to a disqualification more or less known or suspected, though its effect is not understood, and which thus ultimately may make every union there contracted void.

It may indeed be said that the law of England is not perfect, but that it may be so amended as to be nearly perfect by combining the essentials of simplicity of form with certainty of evidence. I will not presume to say what *can* be done, but I must say that I do not see *how* it can be done. If certain fixed forms are enacted, neglect of them must either annul the marriage or not. If it does not annul the marriage we have the principle of the law of Scotland. If it does annul the marriage, it seems to me impossible to devise any form through which doubt and misapprehension shall not find their way. The Statutes of Frauds and of Wills have seemed to establish the simplest conceivable rules to make a contract or a bequest valid, demanding only that the one shall be in writing, the other simply signed and attested by two witnesses. But we all know the infinity of litigation to which the ingenuity of human blundering (generally with the most honest intention), has in both particulars given rise, and how still, after a perfect code of judicial decisions on both statutes has been piled up, there arise every year fresh cases, in which it is hard to say whether the forms have been sufficiently complied with or not.

John Boyd Kinnear, Advocate and Barrister.

Now though, as regards property, it may be convenient to establish a sanction of nullity to compel adherence to convenient rules, can it be right to apply so awful a penalty as nullity of a marriage is, merely to enforce adoption of human formalities? And since even that terrible threat does not extinguish doubt or litigation, but only transfers it to questions of form, is there anything really gained? If we must have litigation and doubt, is it not better that it should involve an inquiry into the real meaning of the parties, rather than merely into their compliance with certain rules of law?

I cannot think that these doctrines will be disputed in the abstract. They have, I venture to think, failed hitherto to receive due application to the subject we are considering, chiefly because popular writers on the subject of marriage have assumed that it is only in Scotland that uncertainty as to marriage may exist, and have failed to recognize the much wider and more serious uncertainty to which the enactments of fixed forms exposes it in England.

There are, however, one or two other points in which advantage is claimed for the law of England over that of Scotland, on which I should wish to make a brief observation. One of these is the comparative facility for contracting secret marriages, and the consequent liability to promote the crime of bigamy. But on this last head the judicial statistics afford the best evidence, and they prove that though the detection and punishment of crime is more efficiently attended to in Scotland than in England, through the institution of a public prosecutor, the crime of bigamy is less frequent in the northern than in the southern part of the island. And indeed anyone who considers the facilities in England for evading the publicity which the law desires, the cases which constantly appear in the criminal, the police, or the divorce courts, or the cases which are commonly known in society, must see that in every rank nothing is so easy as to elude discovery of a marriage. A residence for a fortnight in a strange place or a surrogate's licence, can always secure the validity of a marriage, though no public notice of the intention to contract it has or could come to the ears of any of the relatives or friends of the parties. And at all times and in all places there are many men and women living together of whose relation to each other, whether matrimonial or adulterous, their ordinary acquaintances have really no knowledge whatever, save the account they choose to give of it themselves. In such cases if the fact of a marriage is denied, there is really nothing to prevent the contraction of a second marriage, only afterwards to be discovered to be bigamy.

These facts also dispose of any plea which can be suggested respecting the policy of requiring assent of parents or guardians to the marriage of minors. In truth the logic of facts has settled this question. Want of consent was made a ground of nullity for nearly two-thirds of a century; it was then seen to be a formality infinitely too heavy for the consciences of men to bear. It is, therefore, now not a ground of nullity even in England, and it is scarcely worth while, after such practical admission of its impropriety, to consider it further.

I have in these remarks confined myself to the legal and practical view of the subject as developed by the history of legislation and the judicial records of both countries. The moral aspect is one which, perhaps, it might be deemed out of place to consider here, but I may be permitted to refer to the arguments on that head which I have adduced in the chapter on the Law of Marriage in my work on the "Principles of Reform, Political and Legal," published last year.

But though, on grounds of morality as well as of law, I have come to the conclusion that nothing is gained, and much is lost, by substituting the demands for evidence of forms in room of evidence of substance, and therefore think the general principles of the law of Scotland the sounder of the two, I would not be understood to regard that law as perfect in all respects. The method, for instance, of establishing a marriage by evidence of reputation (or as it is called in Scotland "habit and repute") may, I

John Boyd Kinnear, Esq., Advocate and Barrister.

think, be not unreasonably objected to. The chief plea in support of it is, that when persons have for a very long time represented themselves to their neighbours as married, they ought not to be entitled to outrage decency by declaring that they never were married. But it may be questioned whether this possible scandal is a greater evil than the exceedingly doubtful and difficult question which the disavowal of the marriage must awaken, seeing that then the point to be ascertained is, not the intention of the parties to marry or not, but the prevalent opinion as to what their intentions were. Nor, certainly, is there in most of such cases any consideration due to the parties themselves. If they desired or intended to establish a matrimonial *status*, nothing can be easier than that they should distinctly say so, in which case the evidence would be of present consent and not of mere reputation. The abolition of this method would therefore remove a considerable source of any perplexity which arises in the administration of the general law of marriage in Scotland, without affecting the leading principle on which it rests.

But I cannot see that it would be right to abolish the other irregular method of constituting marriage, which is called "promise *subsequente copulâ*." In this case there is no reason for the abolition, grounded on uncertainty, since the law requires the promise to be in writing. But if, trusting to such a solemn promise, a woman gives to her lover the rights of a husband, there is certainly every reason of morality in favour of compelling him to perform the promise, or of holding it as legally fulfilled. And the beneficial operation of the rule may be seen in the fact that, while in actions of seduction in England a promise of marriage is very often, perhaps generally, proved to have been the chief temptation, it is of the rarest possible occurrence that in such actions in Scotland any such promise is even alleged. And, indeed, though the law of Scotland allows such actions by the woman herself, their occurrence, is, I believe, less frequent in proportion to the population than in England, where they can be entertained only by causing a loss of the woman's services.

On these grounds, then, I venture to submit that the main objects to be attained in adjusting the laws of marriage are better attained by requiring only evidence of consent and intention (or of promise *subsequente copulâ*) than by demanding compliance with any legal forms, however simple. The legislature may, indeed, very properly enact that certain forms shall be observed, and that their disregard shall be punished with various penalties, short of that of nullity of the marriage. In this way it can secure, what already exists in Scotland, an almost universal adherence to rule and order. But to make nullity the consequence of disregard of the most simple form is to introduce the most distressing mischiefs and uncertainty. Even to ask so little as signature in a public register, would convert many unions from marriage into concubinage, where the circumstances of the parties made such publicity at the moment a conclusive bar to their proceeding; but it would also introduce even into the most honourable alliances a fatal element of doubt. We should then have litigation to determine what is a register, if by accident a wrong book were used; what is signature if a name were mis-spelt or omitted; what is to be the rule if any erasure, alteration, or interlineation should at any time appear in the register; what is attestation, if the witnesses were not at the same moment present or if doubt existed about their names. We should thus, in trying to discover whether the needful forms had been observed, have all the difficulty that we can possibly have, when we seek only to discover by ordinary evidence what the real intentions have been; and we should have honest marriages annulled in order to secure that none but strictly formed unions should be considered marriage.

I should doubt whether any degree of legal convenience would warrant, in point of morality, the establishment of a rule having such consequences. But apart from this question, I rest my opinion on the fact, which impartial examination places beyond a doubt, that the balance of even legal convenience and accuracy in such a question lies in favour of the admission of any sufficient evidence to establish the consent which in all countries is the real essence of the contract of marriage, rather than in restricting the evidence to proof of compliance with a technical form, in regard to which the diversity of human circumstances must often introduce mistakes and errors.

J. Boyd Kinnear.

Lincoln's Inn,
2nd July 1866.

Note.—Having during the period which has elapsed since writing the foregoing observations carefully reconsidered the subject to which they relate in its bearings on social morality, I have come to doubt the propriety of the recommendation I had made that the Scottish method of marriage "by habit or repute" might be abolished. Recognizing still the force of the arguments against it, I am yet disposed now to think that the advantage to morality from the check it imposes on the practice far from infrequent in England, of passing off a mistress, so long as convenient, under the name of a wife, is more valuable than the gain to legal certainty which would accrue from abolishing a rule that in practice has only in very rare cases occasioned doubt. It may be added that the doubt when it exists is never insoluble; nor needs, as so often is the case in England an Act of Parliament to decide it, as either of the parties may at any time have it removed by bringing an action.

Lincoln's Inn, 12th Sept. 1867.

No. 46.—George Graham, Esq., Registrar General.

General Register Office, Somerset House,
March 28, 1867.

Publicity as to Notices of Marriage without Licence in Nonconformist Chapels.

The subject of obtaining greater publicity with respect to notices of marriage without licence has been lately brought under my notice. It is represented to me, and I believe it is the case, that in Nonconformist Chapels very few illegal or clandestine marriages take place, because generally the ministers are acquainted with the circumstances of each member of their congregations; and not being entitled to charge fees, they have not the inducement to encourage the celebration of numerous marriages in their chapels, which in some cases might possibly operate upon the minds of incumbents in the Established Church, as in large towns the fees upon marriages produce a considerble addition to the annual income of the beneficed clergy.

It has been proposed that in Nonconformist Chapels the names of parties to be married should be announced from the pulpit on three successive Sundays, or that their names should be conspicuously placed on a board *inside* the chapel.

I am told that both these plans are unacceptable to Nonconformists generally; who are not disposed to admit that with respect to marriages in their chapels the law requires amendment with a view to affording greater publicity than exists at present regarding the names of persons about to be married therein.

The marriages in Nonconformist Chapels are few compared to the number of marriages by banns according to the rites of the Established Church, 16,000 in a year perhaps, compared with 116,000; it is argued that with respect to marriages according to the rites of the Established Church publication of banns in large towns cannot be said to afford entire publicity, and that previous to that publication the only particular necessarily enquired into is length of residence within the boundaries of the parish or ecclesiastical district; whereas in the case of notices of marriages to be celebrated in Nonconformist Chapels and in register offices, in addition to length of residence, condition, occupation, age, consanguinity and affinity, and in case of minors, consent of parents or guardians, are enquired into; not only enquired into, but also *solemnly declared to as to their truth* with penalties of perjury attached. It is also represented that all these facts are recorded in the "Notice book," open to the public for inspection without charge at the Register Office during 21 days, when the marriage may be forbidden by relatives, or caveats may be entered, stopping all further proceedings; whereas the banns books of the Established Church are not equally accessible.

I am disposed to agree in this opinion; and think that with respect to marriages to be solemnized in Nonconformist Chapels, the only step to be taken with a view to greater publicity as to the notices is the following:—That on boards *inside* chapels in which marriages may be solemnized a notification should be affixed stating that "all notices of "marriages intended to be solemnized in this chapel may "be inspected at the Register Office, situated at No. ——." I think also that a notification should be exhibited *outside* every Register Office stating that "all notices of marriages "to be celebrated according to the rites of the Established "Church, or Nonconformist Chapels within the district of "——, or in the Register Office, may be inspected within." If any change is to be made, the above is what I would suggest. With respect to marriages in Roman Catholic Chapels, I believe that throughout England and Wales banns are published on three previous Sundays.

Publicity as to Notices of Marriage without Licence in Register Offices.

With a view to attaining greater publicity as to Notices of Marriages in Register Offices without Licence, it has been proposed that the names of parties intending marriage should be exhibited *outside* the Register Office. I cannot recommend this, believing that in some cases it would be considered intolerable.

Evidence of Consent of Parents or Guardians.

Nor do I recommend the adoption of what has been suggested in order to obtain in the cases of marriage of minors additional evidence of consent of parents or guardians, that a *written* statement of such consent under the hand of parents or guardians should be indispensable. Many cases would arise where it would not be possible to obtain that document, and the requirement would be considered a hardship not to be tolerated.

Publication of Banns in Churches of populous Parishes.

That the Publication of Banns in populous Parishes in many large towns is useless is made evident not only by 99 couples being asked on one Sunday at St. Pancras, but also by 189 couples being asked in the Cathedral Church at Manchester on the 11th December 1864, and 202 couples on 10th December 1865, and by 125 couples being asked at St. Mary's, Lambeth, on 10th December 1865; in many cases merely the names being mentioned, unaccompanied with any announcement of condition—whether bachelors or widows, &c.

Registration of Marriages according to Rites of the Established Church in Duplicate.

As to registration of marriages by officiating Ministers of the Established Church, seeing that certified copies of all entries are sent regularly to the General Register Office and indexed there, I am not aware of any advantage in registering *in Duplicate*, and in sending that Duplicate Register Book to the Superintendent Registrar (6 & 7 Will. 4. c. 86. s. 30, 31, 33). Where there are many marriages in churches on one morning, there is great difficulty in persuading the parties married and witnesses —four in number at least—to sign *one* Register Book; always to obtain their signatures to *two* is impossible; therefore the duplicate does not agree with the other copy, and it appears to me that an incorrect Register is worse than having none at all. At St. Mary, Lambeth, 30 marriages were solemnized on 24th December 1865, and 39 on 25th December 1865; at the Cathedral Church, Manchester, 56 marriages were solemnized on the 25th December 1864, and 55 on 24th December 1865.

If the Clergy of the Established Church were relieved from this duty of registering marriages *in Duplicate*, they might, perhaps, be induced to make these important records more accurate and more legible than at present; for now owing to the bad writing of the Ecclesiastics, names frequently cannot be read, and consequently in the General Index errors occur, and when, in future years, the names are sought for spelt as they ought to be, they cannot be found. In attempting to obviate this, many duplicate names or aliases are entered in the Great General Index of Marriages, causing much trouble. The Civil Registrars of Marriages write much more legibly.

I am of opinion, therefore, that marriages in the Established Church should not be registered *in Duplicate*, and that there is no occasion for Superintendent Registrars having those Duplicates in Register Offices, as certified copies are sent to the General Register Office at Somerset House.

Issue of Certificates for Marriage, according to Rites of Established Church, by Superintendent Registrars.

I also think that Superintendent Registrars should not be empowered to issue Certificates for Marriages according to the rites of the Established Church. (6 & 7 Will. 4. c. 85. s. 16.) (1 Vict. c. 22. s. 36.) (19 & 20 Vict. c. 119. s. 11.)

Interval between giving Notice of Marriage and Period of Solemnization.

It may be remarked that parties giving notice of marriage to a Superintendent Registrar without licence cannot be married earlier than on the 23rd day; whereas by banns they *may* be married a week sooner, on the 16th day.

No Fee to Superintendent Registrar for Presence at Marriage in Register Office.

I may also observe that Superintendent Registrars generally are averse to the celebration of marriages in Register Offices, and frequently discourage them, as occasioning to them considerable trouble and responsibility, for which they are not entitled to any fee.

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Marriages in Register Offices sometimes preferred, on account of less Publicity.

I am told that there is one advantage in persons having the opportunity of being married in Register Offices. Couples living in fornication are often persuaded by Scripture Readers, &c., &c., to be married there privately and unknown to their friends; they would dislike the publicity of banns, and be ashamed to go before ministers of religion.

Searches as to Notices of Marriages made with facility in 36 Metropolitan Register Offices.

Instances occur where in London clandestine marriages are apprehended as likely to take place; if the notices are given to a Superintendent Registrar, relatives need go only to 36 Register Offices for the purpose of searching the Notice books, and ascertaining what is intended; whereas to visit the 370 churches and chapels in London in which marriages may be solemnized according to the rites of the Established Church, and to inspect the banns' books, is impracticable.

Correction of Errors in Registers of Marriages, under 44th section of 6 & 7 Will. 4. c. 86.

There is one subject connected with Registration of Marriages to which I am desirous of asking the attention of the Royal Commissioners—the correction of alleged errors.

After an entry has been completed in a Register Book of Marriages in England and Wales, no alteration or addition can lawfully be made, nor can any error therein be lawfully corrected, except in accordance with the 44th section of 6 & 7 Will. 4. c. 86.

I am much impressed with the serious responsibility and power given by this section to the Clergy of the Established Church and to Civil Registrars of Marriages. There is no limit as to time elapsed from date of marriage, within which the correction of entry stated to be erroneous must be made; there is no prescribed investigation as to "the truth "of the case;" what is to satisfy the Clergymen or Registrars of Marriages as to the necessity of making the desired correction is a point left open for their own unassisted decision; the only limit is, that the alteration must be made within one calendar month after its discovery.

Thus 20 or 30 or 40 years after a marriage a new incumbent or a new Registrar of Marriages may be persuaded, on what lawyers might think very insufficient evidence, to alter the Christian name of one of the parties married, or of the father of one of the parties, thereby giving an entirely new and different aspect to the particulars originally recorded in the entry. It appears to me that there is danger in this system, and that in the case of an important disputed pedigree in future ages, this correction in the margin supposed to represent, in the words of the statute, "the truth of the "case," may cause injustice and may tend to induce a wrong judicial decision. For it must be remembered that it is not necessary that this alteration be made in the presence of the parties married attesting "the truth of the "case" by their signatures in the margin; the clergyman is empowered to make the correction "in case of their death or absence," before the Superintendent Registrar and two credible witnesses who sign the same, although neither the clergyman nor the three witnesses actually know upon sworn evidence that the new matter inserted is correct.

It may be argued that the original entry stands as it was and is not really altered, and that the additional marginal correction would not carry weight when exhibited in a court of law. But that such should be the case is by no means satisfactory; for, if there be *really* an error in the original entry, it is only right that it should be corrected, and that the correction when exhibited in a court of justice should have proper weight.

Of late years this appears to have been the opinion of Parliament, for the 63rd section of the Scotch Registration Act, 17 & 18 Vict. c. 80. and the 44th section of the Irish Registration Act, 26 & 27 Vict. c. 11., provide a rigid investigation before a correction of an entry of marriage in a Register Book is sanctioned.

I am of opinion that some similar enactment would be wise, just, and beneficial for England and Wales.

Alterations in Registers of Marriages before the Entry is completed.

With respect to alterations made in the register books kept by Civil Registrars of Marriage *before* the entry has been signed, regulations are in force approved by the Secretary of State for the Home Department which are important, and, if faithfully acted up to and strictly followed, effectually prevent improper and unauthorized interpolations being subsequently introduced.

No erasures with a sharp instrument are allowed; and if any word or figure has been inserted erroneously, the registrar must draw a line through it and make the correct insertion over or below it; such alteration, obliteration, or

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addition being numbered consecutively from the first of such obliterations in the book to the last, by writing immediately over it the number in figures, and also writing the *same number at length*, and not in figures, in the nearest margin with the initials of the registrar annexed.

These regulations refer only to corrections *before* the entry is signed and finally completed: *after* it has been completed and signed, corrections can only lawfully be made under the 44th section of 6 & 7 Will. 4. c. 86.

If similar regulations could be applied to Church Registers, it would be desirable.

Channel Islands and Isle of Man.

By 7th and 8th sections of 19 & 22 Vict. c. 119. facilities are given for persons residing in Ireland and in Scotland marrying in England and Wales; I think it desirable that similar arrangements should be made for persons living in the Channel Islands and in the Isle of Man.

Appointment of Secretaries of Jewish Synagogues to register Marriages.

With respect to the appointment of Secretaries of Synagogues for the purpose of registering Jewish marriages, it has been suggested that the President of the London Committee of Deputies of British Jews should no longer certify under his hand to the Registrar General the person appointed to that duty in each synagogue (6 & 7 Will. 4. c. 86. s. 30.) and in some measure following the enactment concerning the West London Synagogue (19 & 20 Vict. c. 119. s. 22.) It has been proposed that Secretaries of Synagogues should be appointed to register Jewish marriages by the Registrar General on his receiving a certificate signed by 10 members of the congregation.

An objection to this proposal has been started, that in remote parts of England and Wales there may be assemblies of Jews not of so respectable a character as the West London Synagogue above referred to, and other synagogues in connexion with it, to whom should not be entrusted the responsibility of nominating a Secretary of Synagogue to perform the important duty of registering Jewish marriages; and it is contended that there is no urgent necessity for altering the law on this subject.

In this conflict much may be said on both sides. No complaints against the new system introduced in 1856 have ever reached me; but it is affirmed that some Jews think it a grievance that the President of Deputies, guided occasionally by the Chief Rabbi, should have the power of preventing marriages according to the usages of the Jews being registered in certain synagogues which he is unwilling to recognize as such. If this grievance exist and should be removed, the following course should be adopted: instead of the certificate of the President of the Deputies, a certificate should be presented to the Registrar General from 20 householders, members of a synagogue established for not less than one year and certified in accordance with 18 & 19 Vict. c. 81, countersigned by the warden, as to the name of the secretary to be recognized by the Registrar General for registering marriages according to the usages of the Jews.

On the other side it is remarked that during 20 years from 1836 to 1856, no complaints ever reached me against the arrangement of the President of the Deputies certifying to me the Secretaries of Synagogues who are to register marriages; and it is asserted that in the year last named, 1856, the case of those Jews who upon ecclesiastical points do not agree with the Deputies and Chief Rabbi has been provided for, and it is urged that in reality no further change is thought necessary by any large number of Jews.

It is stated that the respectability of secretaries is a great point, as they have the responsibility of deciding what marriages are to be registered as solemnized according to the usages of the Jews, which marriages are not always celebrated in public buildings dedicated to religious worship, nor within certain prescribed hours; and it is also said that this respectability is best secured by the recorded judgment of a presiding power like the President of the Deputies exercising proper control after having instituted sufficient inquiries; and it is observed that by such approved secretaries he may with advantage be appealed to in cases where his advice is sought as to the legality of a proposed marriage with respect to affinity and consanguinity, for sometimes difficult points arise whether contemplated marriages should be solemnized; a Jew, for instance, who had long resided in Portugal, thinking it right to marry his niece, which here would not be allowed, Jews generally conforming with the law of the country in which they reside with respect to the prohibited degrees of affinity and consanguinity. But this is a point on which eminent lawyers disagree; some maintaining that in England a Jew may lawfully marry his niece; others, that such marriages are illegal and invalid. It seems desirable that on this subject all doubt should be removed; moreover it is remarked that, if an unexpected difficulty should arise, Jews may always be married in the Register Office of the district in which they reside by Superintendent Registrars' licence or certificate, the marriage being recorded by the Civil Registrar of Marriages, and afterwards the religious ceremony may be performed according to their usages. I have heard it stated that Jews do not hold such religious ceremony to be *really essential*, but recognize marriage as a civil act.

Altogether I have no wish to see the present law altered; all my communications with the President of the Deputies have been of a most satisfactory kind; but, if it should be thought expedient to change the present law, I have in a former paragraph indicated the mode which, in my opinion, should be adopted.

Legitimating Issue per subsequens matrimonium.

As to the Scotch law of legitimating issue *per subsequens matrimonium*, I do not wish to see it introduced into England and Wales. I do not approve of a man shortly before his death marrying a woman whom through life he has been ashamed to make his wife, and thus legitimating the issue of a long concubinage, altogether changing their status, and depriving of his supposed inheritance him who has for many years been brought up and considered as his lawful heir. It is a power which immodest designing women should not be able to persuade weak men in their dotage to exercise.

I know a case where a man 80 years of age, possessing large landed estates and great wealth has never been married, but has illegitimate sons and daughters by more than one woman. This gentleman's brother, 76 years old, has always been considered heir to the property. His eldest son, 46 years old, has in like manner been always brought up as sure to succeed to these great estates. Marriage settlements have been made accordingly, and the great-nephew of the person first spoken of, now 13 years old, is in the same way considered heir sooner or later to his great uncle's wealth.

If the Scotch law legitimating issue *per subsequens matrimonium* were introduced into England, this gentleman to whom I refer would be empowered to make a selection from his aged paramours, and, by marrying the favoured one, make her eldest son heir to his extensive estates, and, were he a marquis, all the sons and daughters of that selected family, would become at once lords and ladies.

This is a system I cannot approve; it may prevail in many countries as well as Scotland, but in my opinion it should not be adopted here.

Marriage of Deceased Wife's Sister.

I am averse to the proposed alteration of the present law as to marriage of a deceased wife's sister. I prefer the present state of the English law on this subject, that the wife's sister should be looked upon in the same light as during the wife's existence; she should be considered and treated as the sister of the husband.

These marriages, I believe, are very much disapproved of in Scotland, and are forbidden in the Roman Catholic Church.

Russians, I am told, look upon marriages with deceased wives' sisters with abhorrence, and the Greek Church and all the ancient eastern churches from the earliest times reprobate them—the Nestorians, the Copts, the Armenians, the Syrians, the Abyssinians.

I here introduce what was said many hundreds of years ago on this subject by St. Basil:—"Make not, O man, thy "young children's aunt into their step-mother, nor arm "against them with those implacable jealousies her who "ought to stand to them in affection instead of their "mother. For it is the step-mother's hatred only which "carries its enmity beyond the grave. Other kinds of "enemies are all willing to make peace with the dead, but "the step-mother begins her hatred after death."

The English law appears to me sufficiently liberal in not denouncing marriages as illegal on account of consanguinity or affinity. Marriages are sanctioned between first cousins, and a man, although he may not marry his aunt or his niece, may marry his great-aunt or his great-niece.

Law of Marriage in Scotland.

It may be presumptuous in me to give an opinion on the Scotch law of marriage; but having witnessed in Cumberland and along the border the good effects produced by Lord Brougham's Act 19 & 20 Vict. c. 96, in diminishing the number of marriages contracted by inhabitants of England and Wales at Gretna Green, &c., a certain length of previous residence in Scotland being rendered necessary, I venture to say that advantage would arise if *irregular* marriages were abolished altogether.

I think that marriage should not be established and held to be valid when founded on what is "meant" by parties living together, and on "intention." Marriage should be openly avowed, and recorded in public documents, and attested by witnesses.

Why should the descent of titles and great estates be left to depend on the loose and fragmentary evidence of "habit and repute;" and why should any one be allowed to pass "into the respectability of matrimony" by mere cohabitation; or rather what respectability can attach to a relation so lightly formed and so easily explained away?

I think the law should be altered which in Scotland permits two minors, without consent of parents or guardians, by deliberate interchange of present consent, to enter into the relation of husband and wife by merely saying to each other, "I take you for my wife" and "I take you for my "husband," thus establishing a legal marriage if done deliberately, without fraud, and if proved.

I believe, if there is no fraud, a youth of 14 years of age and a girl 12 years old can in Scotland thus constitute a valid marriage, which cannot be set aside unless cause should occur for divorce, and yet that same person, although seised in fee simple of his estate, cannot legally sell, exchange or encumber an acre of that estate until he is 21 years of age, although by the marriage which he contracted when 14 years old the whole of that estate, and all his honours —perhaps a dukedom— will go to the issue of that early irregular marriage.

It appears to me that this should be reformed.

I have the honour to be, &c.

No. 47.—The Rev. C. Price, Vicar of St. Augustine the Less, Bristol, to Lord Chelmsford.

8, Charlotte Street, Berkeley Square,
My Lord, Bristol, April 11, 1867.

In the *Ecclesiastical Gazette* for March I see a notice for the first time of this Commission and a "specimen of a "Banns book" presented to that Commission, it is stated at your Lordship's requisition. I know not who are the members of that Commission, and therefore address myself to your Lordship.

I submit, in the first place, that *the Banns book to be used by the clergy of the Established Church and that of the Register Offices should* be identical. If the clergy are to be more minute in their inquiries, or are to give more trouble to parties desiring to be married than they meet with at the Register Offices, a direct premium is held out to marriages at the Register Offices.

The requirement in this "specimen," that the declaration made by the parties should be attested by *both* the minister and the parish clerk, may do well enough for small country parishes, but will be very inconvenient and sometimes impracticable in populous town parishes. The parish clerk and the minister may live a mile or two apart. A poor person cannot give up an hour or so for hunting up one or the other, and, failing one day, repeat the task on another. These notices are often given late on a Saturday evening.

One witness surely is *sufficient*, and, as to several parishes, and mine for one, the office of lay parish clerk has been suppressed and, under 7 & 8 Vict. c. 59. sec. 2., merged in that of licensed curate. The witness should be *either* the incumbent, licensed curate, officiating minister, parish clerk, sexton, or vestry clerk. In my parish the sexton discharges all such functions.

It has been held, I believe, by Lord Eldon, that under the existing law *the clergyman* is bound to make *personal inquiries* at the houses stated to be the residences of the parties. No such requirement is made, if I mistake not, either of the registrars or surrogates. *The parties alone should be responsible* for the information. After 15 years experience in a large town parish I can state that such inquiries are futile. Persons come in, it may be from the country or from the other end of the city, and give a housekeeper a shilling or two-and-sixpence, with or without a bundle, to answer inquiries and state that they are living in the house, which they will do, though the parties in question may never sleep a night there during the whole 15 days that the banns are being published.

Why should not the surrogate's office be abolished and every beneficed clergyman empowered to give marriage licences?

I have the honour to remain, &c.

No. 48.—Charles S. Greaves, Esq., Q.C.

My Lord, London, July 22, 1867.

As I know nothing of the working of the statute which allows marriages elsewhere than in churches, the remarks I may make must not be taken as having any reference to them.

C. S. Greaves, Esq., Q.C.

1. I extremely doubt whether the present system of banns and licences is not defective both in being too strict and in being open to easy evasion. It seems to me that in infinitely the greater number of cases the publication of banns is a perfectly useless and unnecessary proceeding. Its object is to afford all parties who have any objection to make an opportunity for making it, and the notorious paucity of such objections affords very cogent proof of the general uselessness of the practice. As far as I am able to speak, in most instances banns are published by persons above 21 years of age, who are driven to that course by the cost of licenses, and I believe that the instances are very rare where the publication of banns operates in furtherance of the object for which they are required.

2. The present law leaves open a very easy mode of evasion, and that too in the very cases in which it was probably intended to be most effective, viz., among the wealthier classes. By the 4 Geo. 4. c. 76. s. 26, after a marriage has been had it is not necessary to give any proof of the actual dwelling of the parties in the parish where the marriage takes place. The consequence is that if the parties can get married without having resided in the parish at all their marriage is good; and this has led to the practice of persons getting their banns published in populous places, Birmingham, Manchester, and London, though they have never resided a day there (of which I have known several instances), and then running away and getting married the following day. This course has been facilitated by what I believe to be a great misconception of the law. Before the 26 Geo. 2. c. 33, the 62nd canon clearly contemplated banns being published and marriages being had only in the parish where the parties dwelt, and a clergyman was bound to ascertain that fact, subject to suspension, in the same way as he was bound to ascertain the parents' consent.* And the 26 Geo. 2. c. 33. s. 1, and 4 Geo. 4. c. 76. s. 2, also contemplate the banns being published in the place where the parties reside; but, probably in consequence of Bridges' case, and of the difficulty a clergyman might be under in ascertaining whether in populous parishes the parties were resident, both Acts introduce (s. 2 of the former, s. 7 of the latter,) a proviso that no parson shall be *obliged* to publish the banns unless the parties deliver a notice in writing of their true Christian and surnames, and of the house of their abodes within the parish.† It is perfectly clear to me that the object of this clause was in no way to relieve the minister from making inquiries, but for the very purpose of facilitating his efforts in making them, and there is the highest authority for this view. In Nicholson v. Squire,‡ Lord Eldon said, "It is true that a marriage by banns is "good, though neither of the parties was resident in the "parish; but if a clergyman, not using due diligence, "marries persons neither of whom is resident in the "parish, he is liable to ecclesiastical censure, perhaps to "other consequences." Lord Eldon, therefore, plainly considered it to be still the duty of the minister to make the proper inquiries, and I should have thought no reasonable person could have doubted it. However an opinion has been taken up that this clause vested a discretion in the minister whether he should make any inquiry or not, and the result has been that in many cases no inquiry is ever made, and thus a great facility is afforded to clandestine marriages.

3. Now the first remedy I propose for this state of things is that every clergyman having cure of souls shall have power to grant a licence of marriage for the same price as is paid for the publication of banns. At present the law as to licenses is truly a law for the rich and not for the poor, and from Canon 101, I infer that it was so before the 26 Geo. 2. c. 30, for by it licences were to be granted "unto such persons only as be of good state and quality;" but I totally dissent from the propriety of any such distinction. A licence is a dispensation of the publication of banns. Originally banns were always published three times, then a dispensation of one publication, afterwards of a second, and lastly of a third was allowed.§ And I can conceive no ground whatever upon which such a cost should be continued for licences as shall exclude the poor from obtaining them. If it be right that the rich may be married by licence, the same power ought to be brought within the reach of the poor. Besides, I enter my protest against any difficulty being imposed on parties intending to marry, which is not absolutely essential to prevent improper marriages. Burn cites Langton, "We do firmly

* Bridges' case, Burn E. L., marriage, 2 vol., 4.
† The section adds, "and of the time during which they have dwelt, "&c. in such house." This had reference to a clause as to a period of previous residence which was struck out by the Commons. *See* Wilk's Law of Banns, p. 18.
‡ 16. Ves. Jun. 259.
§ See the authorities cited by me in Lane v. Goodwin. 4 Q. B. 361.

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" injoin that no sacrament of the Church shall be denied " to anyone upon the account of any sum of money, nor " shall matrimony be hindered therefore."* This fully warrants my opinion that no poor person should be prevented from marrying by licence by reason only of his inability to pay for it. In the State of New York there are neither licences nor banns required, and consequently the only expense is that of the ceremony.—New York Civil Code, Title III. If licences were so easily obtainable, my belief is that banns would be rarely published, and consequently that there would be little difficulty in ascertaining every requisite about the parties in such few cases. I also think that the tendency of such a measure would be beneficial on the score of morality, and it would certainly in many cases remove a difficulty which now exists in the case of seamen, on which I will hereafter remark.

4. I should require every applicant for a licence to make an affidavit or declaration in a given form containing the true names, calling, and abodes, and I should make any one, who wilfully stated any material fact as to name, &c. which was false within his knowledge, guilty of a misdemeanor, and liable to penal servitude for seven years or not less than five years, or to imprisonment, with or without hard labour, for any term not exceeding two years. Whether my suggestion be adopted or not as to granting cheap licences, this suggestion as to false statements is necessary in order to remove the difficulties as to prosecuting persons now making such false statements in order to obtain licences.†

5. I should require every person who proposed to have his banns published either to produce a paper in a form given by statute, or to state the particulars to be entered in a banns book, and I should make him guilty of a misdemeanor and punishable in the same manner for wilfully stating any material particular in either of these ways, which was false within his own knowledge, as in case of false statements to procure a licence; the 6 & 7 W. 4. c. 86. s. 41 is a good precedent in a like case; and I should extend the provisions of s. 23 of the 4 Geo. 4. c. 76. as to the forfeiture of property to persons making false statements for licences and banns, as they are generally made for the purpose of obtaining property.

6. I should alter s. 7 of the 4 Geo. 4. c. 76. so as to make it quite clear that it is the duty of the minister to ascertain that the parties live in his parish, and preserve the provision as to seven days, and I think it would be well to empower the minister in any case of doubt to require a reference to some known inhabitant, who would vouch for the applicant.

By the Civil Code of New York, now reported complete, Part III., Chapter I., Article II., s. 47, " the person solem- " nizing a marriage must ascertain to his satisfaction, I., " the identity of the parties; II., their real and full names " and places of residence; III., that they are of sufficient " age to be capable of contracting marriage, and the name " and place of residence of the witness, or of two witnesses, " if more than one is present."

7. A question has been raised whether the residence in the case of banns must be actual, or whether it be sufficient if the house, &c. be the usual place of abode during the time; and some have held that the latter will suffice; a slight examination of the statute alone will show that this is an error. As to banns, s. 2 provides that they are to be published in the parish " wherein the persons to be married " shall dwell," and the notice required by s. 7 is " of their " respective abodes within the parish" and " of the time " during which they have dwelt, inhabited, or lodged in " such house," &c. But when we come to licences, the marriages by them are to be solemnized in the church of the parish " within which the *usual* place of abode of one " of the persons to be married shall have been for the " space of fifteen days," &c. Such a manifest variation in the terms plainly indicates that in the latter case the usual place of abode will suffice, but not in the former; and if a doubt could be raised on these clauses it is wholly removed by s. 26, which provides that where a marriage has been had by banns it shall not be necessary to give " any proof " of the *actual* dwelling of the parties " in the place where the banns were published; but where a marriage has been by licence it shall not be necessary to give " any proof that " the *usual* place of abode of one of the parties for the space " of fifteen days " was in the parish where the marriage was solemnized. Probably the reason of the distinction was that the higher classes, for whom licences seem by the canon to have been provided, were considered as the persons who under the statute would marry by licence, and that they were more likely to be locomotive than those who married by banns; but whether that were the reason or not, it is obvious that the words of the statute clearly draw the distinction between " actual " in the one case and " usual " in the other. The 6 & 7 W. 4. c. 85. contains a similar difference of language. In s. 4 we have " *dwell* " in the notice to the superintendent registrar, but in s. 12 the party applying for a licence is to make oath as to " his or " her *usual* place of abode," and s. 25 speaks of " the " *actual* dwelling." The doubt should certainly be settled one way or the other.

8. I entertain considerable doubt whether an alteration should not be made in s. 26, as that section has unquestionably led to the objectionable marriages which have come to my knowledge, and the doubt I have is whether the residence should not be open to inquiry within a limited time after the marriage. After a considerable lapse of time there always is great difficulty in the proof or disproof of residence (of which I had large experience at Sessions in cases of settlement), and therefore it is expedient at least to limit the period within which the proof is required. I do not, however, see why, when a marriage has taken place by a false representation of residence, the matter should be prevented from being inquired into within a reasonable time afterwards. A low groom or footman obtains the affections of his master's daughter solely in order to obtain her fortune; he gets a friend to cause the banns to be published in Birmingham, and then induces the girl to run away and marry him, neither having resided in Birmingham at all. I cannot see any reason why this ought not at once to be investigated. The present clause in fact is a direct inducement to fraud.

9. I now advert to name. In the case of licences a marriage in a wrong name is valid, provided there be no fraud. Lane *v.* Goodwin.* I argued that case, and am convinced that the decision would have been the other way had it not been for the long course in the ecclesiastical courts of holding such marriages valid, and I am by no means satisfied with the decision. Lord Denman is reported to have said, " There might, perhaps, be reasons for " making the rule as to banns extend to licences;" but the terms he used, si ritè recordor, were considerably stronger. On a very careful examination of the old authorities I had been convinced that the ecclesiastical courts had acted entirely on a misapprehension of the origin and nature of licences. As I have already stated, originally one, then two, and at length all three publications of banns were dispensed with by licences, and I maintained that as when either one or two only had been dispensed with it was *absolutely impossible* that the licence could be good unless the true names were inserted (for if the true names were not in the licence, they *must* be used in the banns, and then it would necessarily appear that the licence was wrong), it followed that the licence in all cases must state the true names. I have never heard an answer to this argument, and certainly none was given by the court. I have pointed this out because it does not appear in the report, and it seems to be worth considering whilst determining whether any provision should be made for enforcing the giving the true names in licences. In Bevan *v.* M'Mahon † a marriage was solemnized by licence in which the woman's name was Margaret Bevan; she had been baptized and commonly called Margaret Lea Bevan. The licence was obtained by the man, who knowingly and by the woman's direction suppressed the name of Lea, and gave false places of residence, in order that the surrogate might not know who the woman was, and that the intended marriage might be kept secret from her friends. It was held that the question was whether the woman was married without a " licence from a person or persons having " authority to grant the same." There was no doubt the person who granted the licence had authority to grant it, and it came therefore to the question whether this was a licence for the woman. It was clear that an altered name might represent a person; therefore the name " Margaret Bevan " might represent her; and as the licence was obtained for her and by her direction from a person who had authority to grant it the marriage was not void. I must be pardoned for saying that the question was not whether the woman was married without a " licence from " a person having authority to grant it," but whether the licence itself was valid. If this decision be right, the consequence would be that no licence, which was obtained from a surrogate for any person who intended to get married under it, could under any circumstances be void. I cannot but think that a provision ought to be made to enforce the insertion of the true names and true callings and places of abode in every licence. The provision I have suggested, No. 4, would go a long way towards effecting a

* Eccl. L. Marriage vit., p. 32, 1st Ed.
† See Reg. v. Chapman, 1 Den., C. C., 432, and other cases. 3 Russ. C. & M., 4.

* 4 Q. B., 361.
† 30 Law J. D. & M., 61.

remedy in such cases; but whether it alone would suffice seems to deserve careful consideration. We have already noticed that the New York Civil Code requires the person who solemnizes the marriage to ascertain the "real and "full names and places of residence of the parties."

We think that any person to whom an application for a licence was made should be invested with the power of postponing the granting it, if he entertained any reasonable doubt as to any material fact, in order that he might inquire into that fact.

In the case of banns the true names are required to be used, and necessarily so; for otherwise they would give no notice of the persons intending to be married. This has necessarily led to many questions, and must ever do so; for among the lower classes there is nothing more uncertain in many cases than what a man's true name is. In the mining districts of Staffordshire and Shropshire there is hardly a man, if I mistake not, who is not better known by some nickname than by his real name. It is settled that if there be a total variation of a name or names the marriage is void, and it is immaterial whether the mis-description arose from accident or design, or whether it were fraudulent or not; but if there be only a partial variation, as the alteration of a letter, or the addition or suppression of a Christian name, or the names have been such as the parties have been known by at one time and not at another, the publication may or may not be void; the supposed mis-description may be explained, and it becomes a most important inquiry whether it was consistent with honesty of purpose or arose from a fraudulent intention.* Notwithstanding the high authority of this decision, and of those upon which it was founded, I must be pardoned for doubting whether fraud has anything to do with the matter. The banns are required to be published in the true names in order that they who know the parties may know when they hear the banns who are the persons who are going to be married; and the true question is, "do the names pub-"lished indicate to those who know the parties that they "are the persons intending to be married?" This question can in no way be affected by what the parties *intended*. The simple question is, does the publication give notice to those who know the parties that they intend to be married? Nothing was better known formerly than these sort of questions in criminal trials, where the prisoner pleaded that his name was wrongly stated; it was always a good answer to such a plea that he was as well *known* by the name alleged as by the other name, and this would seem to afford a very good guide in these cases. Suppose a man published his banns with one only of several Christian names, and this was alleged to be a bad publication, surely it ought to be a good answer that he was known as well by the one as by all the Christian names. If the publication is to be effectual it must give such a notice as is sufficient to enable parties to object. It is impossible to apply any other test for the purpose of deciding such questions, nor can any rule be framed as to partial variations, for a single letter in multitudes of cases changes the name altogether. As to cases where the variation is fraudulent, the party guilty of it would be hit by my proposal No. 5, which I suspect would reduce any intentional false statements within a very narrow compass indeed. I would add that I would make it essential that one of the parties should personally apply for the publication, and produce the paper or answer the proper questions to be inserted in the banns book.

10. As to the time of publication, I am clear that immediately after the Second Lesson in the morning is not only the present legal time, but that it ought not to be altered. My reasons for both are in my pamphlet, and as to the latter at page 45 of it.

11. At Plymouth for more than 20 years sailors have been married immediately after the last publication of banns in the middle of the service, and I have heard of a case also at Southwold. It appears from a pamphlet of Sir T. Leman in 1755, cited by Mr. Wilks,† that the case of sailors was very much canvassed during the passing of the 26 Geo. 2. c. 33, and Sir T. Leman, as I understand him, seems to say that in their case the time for the publication of banns, &c. before marriage would not be an hour longer than before the Act. Now I cannot find that before the Act the marriage could not take place till the next day after the last publication,‡ and the question is whether the marriage must not now be delayed till the next day. That turns on the words "three Sundays *preceding* the "solemnization," which seem to indicate that the three Sundays (*i.e.*, the whole of each) must precede the solemnization, and s. 17 of the 3 Geo. 4. c. 75 seems to further this view. That section provided that banns should remain affixed to the church doors "until *the expiration* of the "three Sundays on which such banns shall be published," and that provision was an addition to the 26 Geo. 2. c. 33, s. 1, which had the words "three Sundays preceding," &c., and the inference is that the framers of the 3 Geo. 4. c. 75 understood the former Act to require the marriage to be after the expiration of the last Sunday. On the other hand s. 3 of the 26 Geo. 2. c. 33, and s. 8 of the 4 Geo. 4. c. 76, only render the publication of banns void where a parent or guardian publicly *in the church*, "*at the* "*time of such publication*," declares his dissent. It is difficult to conceive any reason why the dissent should be so limited, unless the marriage might take place immediately after the last publication. There can be no doubt that there is sufficient uncertainty in the matter to render it expedient that the point should be settled. It is the common practice at Plymouth, and probably at other seaports, for vessels to sail very early on Monday mornings, and this favours the allowance of marriages immediately after the last publication.

12. Sec. 8 of the 4 Geo. 4. c. 76 only avoids banns where they are forbidden by parents or guardians in the case of minors; ought not cases of non-residence, insanity, &c. to be provided for? I once heard a woman forbid a man's banns, alleging that he was her husband.

13. As to registration, I am quite clear that the old system of parchment registers ought at once to be restored. Paper not only decays by mere time infinitely sooner than parchment, especially in damp places, such as parish chests, but is much more liable to destruction by mere user, and very easily destroyed by ill doers. The Bradley Register, Derbyshire, is all on paper, and the corners of the leaves and their edges are much worn away, the leaves are almost all loose, and some missing, so that many entries are either wholly or partially lost. I know sundry parchment registers of equal or greater age quite perfect still. In Reg. v. Bowen* the prisoner *tore* off a part of a leaf in the presence of the minister. I doubt whether this could be done with parchment. It must also be remembered that the original register is often required in order to identify the parties by their handwriting in it, and no transcript or copy can serve that purpose.

14. I think the minister who performs the ceremony is the proper person to make the entries, and see that the parties sign their names properly; and I think there ought to be a penalty imposed on any neglect to enter, &c. in a legible manner, &c., as there certainly are cases where great slovenliness has occurred. In country parishes it would often be very difficult to find anyone except the minister, and even if anyone could be found, he could hardly be expected to attend gratuitously. By the New York Civil Code, Part III., Chapter I., Art. II., s. 48, "the person solemnizing a marriage† must enter the facts "ascertained by him pursuant to the last section [for which "see No. VI. ante,] and the date of the solemnization, in "a book to be kept by him for the purpose." This is a very strong precedent in favour of a like course in England.

15. I think there ought to be a very stringent provision as to the safe custody of all registers. I not only would require that they never should be allowed to be removed from the proper custody, but that they never should be examined except in the presence of the clergyman or a churchwarden or some responsible person. Bowen was detected in the act by the minister who was present; had he not been there no one can say what the effect might have been of the destruction of the part of the leaf that had been torn. On examining the register of Beeley last autumn, in the presence of the incumbent, from 1538 downwards for entries of members of the family of Greaves I found a tick in black and another in red ink against every entry relating to a Greaves. These ticks had been made apparently within the last few years. In numerous instances the entries, especially of the Christian names, seemed to be on erasures, and they are consequently open to doubt. But in this case, herald's visitations, entries in the herald's college, deeds, &c. may prevent any fabricated entry from having any effect. It must often happen, however, that there exist no such means of prevention. These things were certainly done before the present incumbent's time. I am afraid registers may sometimes be tampered with, not only with a view to further a claim to property, but even for the mere purpose of making a pedigree, and it is highly desirable that their safe custody and proper inspection should be enforced by sufficiently severe penalties.

* Per Lord Tenterden, C. J. Rex v. Tibshelf. 1 B. & Ad. 190.

† Pp. 29, 30.

‡ The rubrics of the 2nd and 5th Edw. 6. required the new married couple to receive the Holy Communion on the day of their marriage, and the present rubric is, "It is convenient that the new married persons should receive the Holy Communion at the time of their marriage, or at the first opportunity after their marriage." These are at least consistent with the marriage taking place immediately after the third publication of banns.

* 1 Den. C. C. 22.

† See post No. 20 as to who may solemnize a marriage in New York.

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16. I think a proper provision ought to be made for amending parish registers where mistakes have occurred or entries have been omitted. Such a provision would have been made in the Forgery Act, 24 & 25 Vict. c. 98, after sec. 37, had it not been considered that it would be out of place in that statute. There is such a provision in the Scotch Act, 17 & 18 Vict. c. 80. s. 63, by which the sheriff is authorized to amend entries. The county court judge would be a proper person in England to make such amendments.

The amendments should be made upon evidence on oath, and the original entries should be left standing, and an entirely new entry made and signed by the judge. In the Mayfield register there is no entry in 1801 of the burial of the lady of the manor, and in 1804 there is no entry of the burial of the eldest daughter of the lord of the manor, but in both cases there is a blank space in the register. The register was at the vicarage when both burials took place, and the clergyman of another parish performed the service in each case, but delayed to make the entries till he visited the parish again, and by some omission they were never entered at all, and all who could have proved these facts are now dead.

17. It often happens that there is great difficulty in cases where marriages have to be proved beyond living memory in discovering where such marriages took place. It is very common for the higher orders to be married away from their homes, and generally no notice of their marriages is to be found in their own parish registers; indeed hitherto they could only be irregularly entered in any parish except that where the marriages were had. But I have found two such entries; one in the Mayfield register, Staffordshire, of the marriage of the lord of the manor, Christopher Ley, in 1670, at Brailsford, in Derbyshire, and the other in the Beeley register, of the marriage of John Greaves, in 1642, at Doveridge. By means of this entry I was enabled at once to obtain a certificate of the marriage at Doveridge. Now I venture to recommend that any party to any marriage should be authorized to cause an entry to be made in the register of his own parish of his marriage which had taken place elsewhere, upon producing a certificate from the clergyman who had solemnized the marriage, and payment of a certain fee to the clergyman for making the entry. The entry should be a copy of the certified entry, and, for the purpose of identification, one or both of the married persons should sign the entry. No doubt as far back as living memory extends cohabitation and reputation suffice to prove a marriage (except in certain cases); but beyond living memory the proof rests upon documentary evidence in general; and any clue to that evidence is very difficult to obtain, and it not uncommonly happens that no clue can be discovered to the place where a marriage took place. I think the course I have suggested would not only assist in obtaining proof of marriages, but would in some cases tend to prevent or frustrate forged entries; for the absence of any true entry at present leaves a door open to the fabrication of a false entry. In Bowen's case the object of tearing out a part of an entry, leaving the date only remaining, was to fit in the parchment return to the registry of the diocese, which he had altered so as to suit his purposes, leaving it with the date copied from the register. See the end of No. xx. post.

18. There has last year been a decision in Ireland which requires to be noticed, as it is of a very mischievous tendency, and is certainly directly in the teeth of the English decisions, and, with all deference to the majority who decided it, is clearly erroneous. In Reg. v. Fanning* the prisoner was indicted for bigamy, and it was proved that he had been first married to M. A. Stewart by a Protestant clergyman, and that whilst she was living he had afterwards been married to C. Brien, a Catholic, by a Catholic priest, the prisoner at the time representing himself to be a Roman Catholic, but the jury found that he had been a professing Protestant within 12 months prior to this marriage: and it was held that, as this marriage was rendered absolutely void by the 12 Geo. 2. c. 19. s. 1 (I.), it was not sufficient to constitute the offence of bigamy. The Chief Justice of the Queen's Bench, Christian, J., O'Brien, J., Fitzgerald, J., Fitzgerald, B., Hughes, B., and Deasy, B., were the majority; Monohan, C.J., Pigott, C.B., Keogh, J., and O'Hagan, J., were the minority. It has been settled in England for at least 40 years that, though in a case of bigamy the first marriage must be good in every respect, that rule does not apply to the second marriage; that the second marriage must of necessity be totally void, because the lawful wife or husband of one of the parties is still alive, and the statute in applying the word "marry" to the second marriage could only have used it in the sense of going through a ceremony, which, of necessity, must be totally void. It is quite clear that the English decisions were not understood in their true bearing by the counsel or by the court. They are Rex v. Allison,* Rex v. Edwards, † Palmer's case. I have examined Bayley's MSS. notes of the trial of this case. The prisoner had caused the banns to be published in wrong names, but had told the woman that they were so published before the marriage. The point reserved was, whether this was a sufficient marriage as a *second* marriage, and this turned on the 4 Geo. 4. c. 76. s. 22, under which both parties must know that the publication is in the wrong names, Rex v. Wroxton,§ and the judges unanimously held that the prisoner had been rightly convicted. Next came Rex. v. Penson,‖ Reg. v. Orgill,¶ and lastly, Reg. v. Brawn.** I happen to know that this case was very much considered by Lord Denman, C.J., and Alderson, B., as I had a correspondence with Lord Denman about it; but the only doubt was as to the liability of the man to be convicted of counselling the woman to commit bigamy. See 1 Russ. C. & M. 273. All the Acts on which the cases have arisen make use of the same words in avoiding marriages, and therefore the decision on one is applicable to any other, and there may be other similar clauses, so that it is expedient that the point should be settled, and there can be no doubt that it ought to be settled by making the law accord with the English decisions; for it is perfectly monstrous that a prisoner should escape punishment for one crime because in committing it he had been guilty of another illegality. A simple clause providing that, where on an indictment for bigamy it was proved that the prisoner had gone through the ceremony of the second marriage, it should be no defence that such second marriage might have been void on any other ground than because it was a second marriage.

19. I have given some consideration to the question of marriages of persons above 20 years of age, as sundry instances have come to my knowledge, especially of females of great age, in which the sole object has been to obtain possession of property by means of a marriage with a person barely competent to enter into so solemn a contract. The subject appears to me to be one which it is extremely difficult to deal with in any satisfactory way. The law draws no other line than that of absolute incapacity; yet every one must feel assured that there do occur cases in which the intervention of friends might prevent an improper union. At present such intervention has certainly no legal ground on which it can rest, and would be looked upon as officious and meddling. It would seem to be well if any means could be discovered by which the intervention of relations and friends might be sanctioned and freed from the character of being officious. But unless in all cases some public notification of an intended marriage were required to be previously given, it is very difficult to perceive how anything of the kind could be effected; and it is obvious that any such notification would be quite inconsistent with our present system of licences. Again, it would be requiring a notification to be given by thousands where the cases to which it would apply would fall within narrow limits. I, therefore, feel quite unable to point out any mode by which such an object might be accomplished.

But it does occur to me that there might be some means provided, by which a woman's property might be protected from the mischiefs which commonly follow upon an improvident marriage. As far as my experience goes, these marriages are much more common where the woman is possessed of personalty than where she is seized of realty. Now I never have been able to discover any sound reason why personalty should vest in a husband on marriage, or during marriage, and realty should not. It is quite clear to me that either both should vest or neither, and I am decidedly of opinion that neither should so vest. By the New York Civil Code, Part III., Chapter III., s. 77, "The husband must support himself "and his wife out of his property or by his labour; if he is "unable to do so she must assist him so far as she is able." Sec. 78, "Except as mentioned in s. 77, *neither husband nor "wife has any interest in the property of the other*, but "neither can be excluded from the other's dwelling." I very strongly urge that some rule ought to be established by which, in case no settlement has been made, the personalty as well as the realty of the wife should be completely protected. The late case of Caton v. Caton is a disgrace to a civilized community. A settlement had been prepared of some 15,000*l.* of the lady's own personalty, but the husband persuaded her (against the strong advice of her solicitor) to marry him without executing the settlement, upon his assurance that he would execute a will to the same effect in the vestry immediately after the marriage, and he executed the will accordingly, but revoked it by a subsequent will,

* Report printed separately by Thom, Dublin.

* R. & R. 109.
† 1 Russ. C. & M. 301, from Mr. J. Bayley's MSS., and much better stated than in R. & R. 283.
‡ 1 Dea. Dig. Cr. L. 147
§ 4 B. & Ad. 640.
‖ 5 C. & P. 412.
¶ 9 C. & P. 80.
** 1 C. & K. 144.

and only bequeathed her an annuity; and it was held that she was not entitled to any part of the 15,000*l.*, as there was no memorandum in writing signed by the husband within the 4th section of the Statute of Frauds.* It is manifest that such a state of the law, so far from preventing fraud, has a direct tendency to encourage it. I have repeatedly found that women even of good business habits have no idea of the distinction in the law between personalty and realty, and this affords another reason for adopting one clear rule as to both.

20. I have devoted considerable attention to the question whether one uniform mode of contracting marriage could be introduced. No one, I think, can doubt that it would be a great advantage if one uniform ceremony or contract could be adopted; but I am decidedly of opinion that no such mode could be introduced without leading to greater inconveniences, if not mischiefs, than at present exist. The question stands in a very different position from what it would have done if the matter had been res integra. We have to deal with a case in which custom and habit have become inveterate, and that too upon a subject of all others, perhaps, most likely to be considered with prejudiced rather than unbiassed and impartial opinions. I am well aware that in some countries the contract of marriage is made merely a civil contract; but I must crave leave to doubt whether that has really ever been the true doctrine and practice of Christians. Pufendorf† says, "According to the "opinion of the Jews‡ consummation as well as consent "was, before the law, required to the completing of matri-"mony; yet, by their law, consent alone rendered a mar-"riage valid.§ Grotius observes‖ 'that no proceeding "'was made in the nuptial affairs till the solemnity had "'been ushered in by the hearing of Divine service in a "'public assembly; which most religious and most decent "'institution the Jews probably received from ancient "'tradition and do still observe, and from them it was "'admitted into the Christian church.'" And a religious ceremony was certainly in use very early among Christians, for I find I have noted the following passages in MSS. in Burn. E.L. Πρέπε δὲ τοῖς γαμοῦσι καὶ ταῖς γαμουμέναις μετὰ γνώμης τοῦ Ἐπισκόπου τὴν ἕνωσιν ποιεῖσθαι, ἵνα ὁ γάμος ᾖ κατὰ Θεὸν καὶ μὴ κατ' ἐπιθυμίαν.¶ Unde sufficiam ad enarrandum felicitatem ejus matrimonii quod ecclesia conciliat.** But whether from the first marriage included a religious ceremony or not, nothing can be clearer than it has done so with us from time immemorial, and the fact that during the commonwealth marriage was made a civil ceremony before a justice of the peace, and that the old law was restored immediately on the restoration of Charles II. is a very cogent proof how warmly attached the English were at that time to the accustomed religious ceremony; and it is worthy of notice too that the 12 Car. 2. c. 33 enacted, that "all marriages solemnized since the 1st May 1642 "before any justice of the peace shall be of effect as if "solemnized according to the rites used in the Church of "England,"†† which is a distinct legislative recognition that the obligation of marriage consists in the religious ceremony. To make any mere civil ceremony in all cases the only lawful contract of marriage, upon which all rights and duties arising from marriage were to depend, would, in my opinion, not only be in direct opposition to the feelings, and I venture to think the right and correct feelings, of the majority, I might almost say all but the universality, of the English, but it would tend to shake the faith in the religious ceremony itself. At the same time I feel that just as you would swear a man by the form of oath which he deemed to be most binding on his conscience, so, I think, all persons ought to be freely at liberty to marry by such religious ceremonies as they may please to prefer. I believe that these views are held strongly in the State of New York, which I cannot but think a very much better guide for us than any European State. For, though by their Civil Code, Part III., Chapter I., s. 34, "marriage is a per-"sonal relation arising out of a *civil contract*, to which "the consent of the parties capable of making it is "alone necessary;" yet, by s. 45, "a marriage must be "solemnized in this State in the manner herein pre-"scribed by *one or more* of the following persons, namely, "ministers of the gospel or priests of any denomination, "mayors, recorders, or aldermen of cities, judges of the "county courts or justices of the peace, and in case of "Indians, also the peacemakers acting within their re-"spective jurisdictions;" and by s. 46, "No particular "form is required upon a marriage, but the parties must "solemnly declare, in the presence of the person so-"lemnizing the marriage, and of at least one witness, "that they take each other as husband and wife." So that the parties are left freely at their will to adopt any religious ceremony they prefer, or to adopt both a religious and civil ceremony, or a civil ceremony only; and by s. 48 the person solemnizing a marriage is to enter the marriage. So that in truth the law as to the ceremony or contract itself, under the 4 Geo. 4. c. 76, and 6 & 7 W. 4. c. 86 (amended by subsequent statutes) in England, and the law as established by the new Civil Code of New York, are extremely alike at present, and as to this matter I do not see any reason to alter our law; on the contrary I think that it is fortified by the New York Code.

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There are two material matters in which the New York Code differs from our law. No banns, licence, or notice appear to be necessary by it, or indeed the consent of parents or guardians, except in a case where the wife is married under 14, where the consent of the person having the legal charge of her is necessary by Part III., Chapter II., s. 54., No. 3.

The other difference is, that the only entry actually necessary to be made is by the person solemnizing the marriage; but he is, *on request*, to furnish either party to the marriage with a certificate of the marriage, Chapter I., s. 49, which "*may*, within six months after the marriage, "be filed with the clerk of the city or town where the "marriage was solemnized, or where either of the parties "reside, and when thus filed must be entered in a book to "be provided by the clerk in the alphabetical order of the "name of each party, and in the order of time in which it "is filed."—Chapter I., s. 50. As these provisions are merely permissive they do not appear to be nearly so good as our provisions for registration under the 6 & 7 W. 4. c. 86. But the permission to register in the place where either of the parties reside is a good precedent for what I have recommended in No. 17.

21. A doubt has been raised on the 4 Geo. 4. c. 76. s. 2, as to whether any, and, if so, what residence is necessary before the first publication of banns. It seems to me that if the person has commenced a residence in the parish by sleeping (pernoctando)* on a Saturday night, he has a right to have his banns published on the Sunday morning, unless the clergyman require the seven days' notice under s. 7. But the 6 & 7 W. 4. c. 85. s. 4 requires a notice to be given "to the superintendent registrar of the "district within which the parties shall have dwelt for not "less than seven days then next preceding," and the notice must contain such a statement. And the 19 & 20 Vict. c. 119. s. 2 requires a solemn declaration of such residence, and renders any person wilfully making any false declaration or giving any false notice liable to the penalties of perjury. It seems to me that the law of banns ought to be put on the same footing as to the seven days previous residence, and under the like penalties, as both would tend to prevent the evasion of the 4 Geo. 4. c. 76.

By the 19 & 20 Vict. c. 119. s. 4, where a marriage is intended to be without licence, the superintendent registrar is to cause a copy of the notice of marriage to be suspended in his office for 21 days. It strikes me that in many parts of the country this must *practically* amount to no notice whatever, as the districts of superintendent registrars are so large. What notice can such a notice be presumed to give to parents residing several miles off the office? Why should not a copy be required to be affixed to the church door of the parish where the parties reside?

22. The 6 & 7 W. 4. c. 85. s. 4 requires in every notice of marriage "the name and surname and the profession or "condition of each of the parties," and the dwelling place of each, where marriage is not by licence, special licence, or after publication by banns; s. 7 requires a certificate stating "the particulars set forth in the notice," and by s. 12 this certificate is to be produced on the application for a licence; and the certificate of the superintendent registrar given in Schedule (B.) of the 19 & 20 Vict. c. 119, is in the same form for marriages both without and by banns, and states the name, condition, rank or profession, age, dwelling place, length of residence, district, and county in which the parties dwell. It is quite clear that under these Acts the same statements are necessary in marriages with as without licences, and the same law ought to be extended to marriages by banns and licences under the 4 Geo. 4. c. 76., so as to secure the true names, &c., in all cases alike.

* I must not be taken as expressing any opinion as to the correctness of this decision.

† Book vi., c. 1, s. 14.

‡ Vide Seld. de J. N. & G., l. 5, c. 4.

§ Deut. xxii., 23. 24. Add. l. 8 C. de incest. & inutil. nuptiis.

‖ Ad. Matth. 1. 18.

¶ St. Ignatii Epist. ad Polycarpum, sec. 5.

** Tertull. ad Uxorem Lib. II. cap. 2.

†† This Act was confirmed by the 13 Car. 2. c. 11. But both these Acts are repealed by the 26 & 27 Vict. c. 125, "The Statute Law Revision Act," and attention is called to it; for any day a question may arise in a claim to a peerage, whether a marriage celebrated during the Commonwealth before a justice of the peace is now valid, which will turn on the construction of the savings contained in s. 1 of the Act. This is another instance of the doubts and difficulties which may arise from what I have always considered a most dangerous and impolitic mode of repeal.

* Rex v. Ringwood. 1 M. & S. 381.

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23. I think power should be given to ask any questions as to the *true* names, calling, abode, &c. of any person applying for the publication of banns or licence or presenting himself to be married. See 6 & 7 W. 4. c. 85. s. 26. And any person making any false answer as to any material particular should be liable to the penalties of perjury. See s. 38 of the same statute. And I would extend the same power to the questioning any person produced by any party, and under the same penalties, and also to any person with whom any party alleged that he had lodged, &c., as I have heard of lodgings being taken, but not occupied, and false statements being made in answer to inquiries by the clergyman or on his behalf.

24. I now turn to a subject on which great difference of opinion exists. By the 5 & 6 W. 4. c. 54. s. 2 "all "marriages celebrated between persons within the pro- "hibited degrees of consanguinity or *affinity* shall be "absolutely null and void," &c. Prior to this Act I believe the law stood thus: Marriages within the degrees of affinity were only voidable, and that too during the lives of the parties, and could only be avoided by a suit in the Ecclesiastical Court, and if a suit were instituted by any party for that purpose, the person who instituted it was perfectly dominus litis, and could not be compelled to proceed; and consequently where parties married in such cases either of them could institute a suit and let it pend till the death of one of them, and then the marriage could not be impeached; and in my youth I remember some such cases in the middle classes. Among the lower orders it was worth no one's while to interfere, and such marriages were not uncommon. My attention was called to the subject shortly after the Act passed, by a farmer who wished to marry his deceased wife's sister or niece, and I have watched the matter with some attention ever since, and my strong impression is that the present law is mischievous, as it leads either to marriages in defiance of the law or to concubinage, especially among the lower orders. I am well aware that there are some persons who allege that such marriages are forbidden by the Mosaic law. If such were the case I should not venture to say a word in favour of them; but having to the best of my power considered the original Hebrew text with such assistance as Arabic affords, I am very clearly of opinion that such marriages are not forbidden by the Mosaic law. This is not the place for such a purpose, or it would not be difficult to show not only what the true meaning of the original is, but that in this (as in sundry other instances) the misapprehension has arisen from the difficulty of finding English precisely equivalent to the Hebrew, which led to the use of English which in one sense seemed to represent the original, but in another extends beyond the meaning which the original will bear. Such being the case I must be pardoned for doubting the propriety, if not the right, of the Legislature to forbid such marriages. But be this as it may, of one thing I am quite clear, that the middle and lower classes will never be induced to look upon such marriages as improper, especially as in some cases some of these marriages are expressly commanded by the Mosaic law,* and at least impliedly sanctioned by our Saviour himself;† for if they had been erroneous, or if He had intended to abolish them for the future He would have plainly indicated it. And here I must observe that the 25 Hen. 8. c. 22. s. 3 is framed upon the 18th Leviticus, and clearly was not intended to extend it, for it recites "the degrees of "marriage *prohibited by God's law, that is to say,*" and then it goes through the chapter seriatim to a certain extent. Anyone, however, comparing it with our *present* version will find that it seems to conclude with verse 16, and then proceeds "or a man to marry his *wife's* daughter, "or his *wife's* son's daughter, or his *wife's* daughter's "daughter," instead of "a *woman* and her daughter," &c., as in v. 17 of the present version. But the explanation is easy. The statute was no doubt framed according to the old versions. The Vulgate has "turpitudinem *uxoris* tuæ et filiæ ejus.' The Breeches Bible of 1578 has, "Thou shalt "not discover the shame of the *wife* and her daughter," &c., and Lord Coke understood the verse in the same way.‡ And I think it is the better translation. The Hebrew word (like γυνὴ and mulier) denotes both "woman" and "wife," and in this chapter it is used as wife in v. 8, 11, 14, 15, 16, and 18, though perhaps in another verse or two it means woman. Be this, however, as it may, it is clear that the Legislature adopted what was considered to be the true meaning of v. 17. And consequently they followed the original accurately to the end of v. 17.

The only remaining words in the statute are "or his "wife's sister." Now these words are clearly taken from the beginning of v. 18, and the end of the verse is wholly unnoticed. Now the end clearly confines the prohibition to the lifetime of the wife. In truth it might just as well be said that our enactment against bigamy made every one guilty of felony who married again after his wife's death, as that this verse prohibits a man from marrying his wife's sister after his wife's death. Nor does the matter rest merely on the limitation "during her life," but the reason of the prohibition is given, viz., the vexing of the wife, which could only be during her life. And the giving this reason tends very strongly to show that this kind of marriage did not fall within the general words in v. 6, for, if it had, how can it be explained that the same reason was not given in the very word used in v. 6 as is given by the same word in the case of the wife's daughter and granddaughter in v. 17? Nay more, if the wife's sister was intended to be excluded like the wife's daughter and granddaughter, what could have been more simple than to have said, "a wife and her sister "or her daughter, &c." in v. 17, and to have omitted v. 18? A clearer case of an intentional variation in the terms used could hardly be found. It is quite clear that the only instance in which the Legislature went beyond the marriages expressly mentioned in the 18th of Leviticus is the wife's sister; and as the object of the Act was to annul the marriage of Henry VIII. with his brother's widow, which falls within the words, "the brother to "marry his brother's wife," and the section in terms professes merely to enact what was "prohibited by God's "law," the natural inference is that this extension arose from an erroneous construction of v. 18, and this view is fortified by the dicta of Vaughan, C.J., in Hill v. Good,* who said that this verse "may be understood to prohibit "the husband his wife's sister absolutely as well as to pro- "hibit her during his wife's life;" and again, "It is plain "the wife's sister is prohibited in some respect of affinity "by the words 'neither shalt thou take a wife to her sister "'to vex her.'"† It is well worthy of note that the statute wholly omits the general prohibition contained in v. 6, and therefore seems to assume that the subsequent verses include all the cases to which the general prohibition extends. The framers of the statute do not appear to have attended to two points sufficiently: 1.—That polygamy was lawful under the Mosaic law, and consequently that Exodus, c. xviii. must be construed with reference to that state of the law. 2.—That that chapter prohibits all connection, whether during marriage or otherwise, in the specified cases; and therefore "wife" is properly used in that chapter. But the law of England not allowing polygamy, and the statute only applying to marriages, the terms used ought to have been suited to the difference, and instead of "wife" we ought to have had "widow" throughout. The 28 Henry 8. c. 7. adopts the terms of the 25 Henry 8. c. 22., but adds in some cases words as to the consummation of the marriage. The same remarks therefore apply to the later as to the previous statute.

I have only to add that I unfortunately happen to know that among the lower orders nothing is more common than that the children of the first wife are very often shamefully ill treated by the second wife, who is no relation of their mother; sometimes death, and more frequently broken health, is the consequence. In fact, this is one of the social evils of the present day. Now, an aunt by blood is much more likely to treat her own sister's children well, and nothing is more natural than that, on the sister's death, she should take them under her charge and become a second wife. The sisters of the wives of the poor rarely live with them, and there is little probability of their forming attachments for the husbands during their wives' lifetime. These matters deserve grave consideration.

By the New York Civil Code, Part III., Chapter I., s. 38, "Marriages between parents and children, ancestors and "descendants of every degree, and between brothers and "sisters of the half as well as the whole blood, are "incestuous, and void from the beginning, whether the "relationship is legitimate or illegitimate." Marriage with a deceased wife's sister, therefore, is allowed in the State of New York.

I have the honour to be, &c.

* Deut. xxv., 5.
† Mark xii., 19.; Luke xx., 28.
‡ 2 Inst. 684.

* Vaughan R. 312.
† Ibid, 320.

EXAMINATION OF WITNESSES.

Saturday, 17th February 1866.

PRESENT :

THE RIGHT HON. THE LORD CHELMSFORD.
THE RIGHT HON. THE LORD LYVEDEN.
THE RIGHT HON. SPENCER HORATIO WALPOLE, Q.C., M.P.
THE ATTORNEY GENERAL.
TRAVERS TWISS, ESQ., Q.C., D.C.L.
ALEXANDER MURRAY DUNLOP, ESQ., M.P.

LORD CHELMSFORD IN THE CHAIR.

The Right Hon. JAMES MONCREIFF, M.P., Lord Advocate of Scotland, examined.

Right Hon. J. Moncreiff.

17 Feb. 1866.

1. (*Lord Chelmsford.*) The Commission is extremely happy to have the benefit of your observations with regard to the operation of the marriage law in Scotland, and they wish to know whether it would be more convenient to you to answer the questions of the Commission, or at once to state your views on the subject ?——Thinking that this was a matter of great importance to the law of Scotland, and regarding it mainly as an attempt to see what materials for assimilation might be found, I thought it better to put my observations to some extent in writing. I had intended to have done so to the full extent, but my avocations have prevented me from completing that task. If it is equally agreeable to the Commissioners I will state, in the first instance, the views that have occurred to me, and then I shall be prepared to answer any questions. I may say that I have expressed my views with a considerable amount of freedom, but I am sure it will not be thought anything but respectful to the Commissioners. I presume that it will be the wish of the Commission, in the observations which I may submit to them, that I should address myself not only to the legal aspect of the law of marriage in Scotland as it now exists, but also to the much more important question, with the consideration of which the Commission is charged, of how far an assimilation between the systems which prevail in either end of the island, is desirable or practicable. No one can doubt the excessive inconvenience of having different systems of constituting the most important of all social relations prevalent in countries so nearly identical in character and interests, and so closely allied both by natural and political relations. The object of assimilation is important and desirable beyond doubt. But it is far from being easy of attainment, and involves questions of the deepest social importance, from the elucidation of which, by this Commission, I should hope for most beneficial results. The natural solution of the difficulty which frequently is suggested in England, is simply to assimilate the law of Scotland to that of England, assuming the law of Scotland to be antiquated and barbarous, and that of England to be on the whole satisfactory and efficient. Superficial reasoners on this side of the Tweed (and some of the reasoners are superficial) are apt to hold this language, and are surprised, I believe sincerely surprised, that Scotland should seriously dispute their views, and hesitate to adopt their results. I rejoice at the appointment of this Commission were it for no other reason than that the result of its deliberations must necessarily be to dispel views which are worthy neither of a statesman nor a jurist, and to place on an intelligent and accurate footing a question in the just solution of which the community has the greatest interest. I am anxious to record my views on the popular opinion, because I think it interferes very much with the real extrication from the difficulties with which we have to deal. There may be many grave reasons for preferring the English to the Scottish system ; but they must be looked for in a different direction. The two systems spring from the same parent stock. And it is not so long since they approached so nearly as hardly to be distinguishable by some at least of the ablest lawyers of either country. They have since then greatly diverged by alterations, not on the Scottish, but on the English side. It remains now to trace the history of these divergencies and their results, and to inquire what elements of assimilation or approximation may be found in them. This, I may remark, at the outset, is not a legal question, but entirely a social one. The law which is to be found in books, or the illustrations which a lawyer may find in his practice, are very insufficient and often misleading guides. A lawyer deals all his life with the anomalies of the law. While it works easily, he sees nothing of it ; he is conversant only with the exceptional cases, and is apt, even when his judgment is philosophic and liberal, to confound the law itself with the examples with which he is familiar. Marriage law, like all other law, whatever its principle and however assorted, must necessarily be full of anomalies. I think then that on the question of assimilation we cannot now begin to judge until we are in possession of facts of which at present I am in great measure ignorant. The social effects of the marriage law of the two countries is the first thing to consider. A very slight sketch of the law of Scotland in regard to marriage, as it now exists, will form a sufficient foundation for the few and imperfect suggestions which I shall be able to make. I need not stop to trace its history, for which, in its details, perhaps the materials are imperfect. The loss of the records of the Ecclesiastical Courts prior to the Reformation, and the separate jurisdiction of the commissaries since that time have left some of the more speculative matters in considerable doubt. It is enough to say that it presents no feature of peculiarity, nor any characteristics not shared, at one period or other, with all the European nations. It was founded on, although it may not have been altogether adopted from, the Canon Law, as it stood prior to the Council of Trent, and the civil law, on which the canon law was founded. The principle of it is that recognized by all systems, namely, that marriage is perfected by mutual consent ; and it assumed as evidence of consent, the *sponsalia*

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de præsenti, and *sponsalia de futuro* of the canon law. In short, it held mutual consent to be proved either by present declaration or by promise, followed by intercourse. And such is still the foundation of our law. I need not tell the Commission that in these principles themselves there is nothing peculiar to the law of Scotland. As I have said, with more or less modification, they prevailed in all, and are still to be found in most Christian countries. I am aware that in the *Queen* v. *Millis** it was held, and I suppose must now be considered as conclusively fixed, that it never was the law of England that marriage could be constituted without the sacerdotal benediction. Indeed, Mr. Riddell and Mr. Fraser maintain such to have been the law of Scotland also. But such was not the opinion of many of the greatest English lawyers. Lord Stowell, in the case of *Dalrymple* v. *Dalrymple*,† distinctly laid it down that the law of England prior to Lord Hardwicke's Act, rested precisely on the same foundation as the law of Scotland, and that the foundation common to all Europe. Dr. Lushington, when examined before the Committee of 1849 says, "that he is aware of no dif-"ference between them;" that is, prior to Lord Hardwicke's Act.

2. I think you will find that in the case of *Beamish* v. *Beamish* the House of Lords determined in the same way as in the case of the *Queen* v. *Millis*.——It has been repeated since. I hold it to be the law of England, though still in an antiquarian point of view it has not been the unanimous opinion of English lawyers. Dr. Phillimore, in moving the Marriage Act of 4 George IV., expressly says that Lord Hardwicke's Act swept away the scandals of marriage *per verba de præsenti*. Lord Plunket in the same debate recommends Parliament to recur to the ancient principle as it was before Lord Hardwicke's Act. And the opinions of the minority in the *Queen* v. *Millis*, and notably the opinion of Lord Lyndhurst, who concurred with the majority only on the question of bigamy, point to the same result.

3. In the case of *Beamish* v. *Beamish* the point was distinctly raised, because the question was whether—the person who was the bridegroom being also the officiating clergyman—whether in fact the marriage was a valid marriage under the circumstances. The House of Lords thought it was not?——Yes. How far these principles still rule among European nations I am unable to say. France has widely departed from them—but has alone, as far as I know, set up a system of a purely civil contract. I may say that the question argued in the *Queen* v. *Millis*, and in *Beamish* v. *Beamish*, has been raised in Scotland also both by Mr. Fraser who writes upon the Domestic Relations, and also by Mr. Riddle in his book on Peerages; and they maintain that *Dalrymple* v. *Dalrymple* was wrongly decided, and that the law of Scotland was the same as was laid down in the *Queen* v. *Millis* to be the law of England. I understand from Mr. Fraser that in his new edition he intends to go very largely into that matter. As to foreign nations I am unable to state how that matter stands, but if I may venture to make a suggestion, it is a subject which is not without its interest to this Commission. I find from a book of Du Chesne published in 1845, which professes to give the marriage law of Europe, that in Sardinia although they have a code there, and a marriage must be according to the code, yet although a marriage is null as between the spouses it is not null as regards the children, even although the provisions of the code have not been observed. The civil incidents do not accrue to the spouses, but the children are notwithstanding legitimate; whether that is altered or not I am not aware. I would also refer to a work by Mr. Bishop illustrative of the law of the United States—"Commentaries on the Law of Marriage "and Divorce, by Joel Prentice Bishop," published a Boston; in which he deals with the law of America as being precisely the same as the law of Scotland. He says that in England there is a statute which requires the marriage to be attended with special formalities; but, passing from England, he goes on to remark at page 65: "In Scotland informal "marriages have always been common, and in them the "question of mutual consent is usually the only one "which can be raised touching their validity, so that "the Scotch judicial records contain numerous deci-"sions relating to this doctrine, *and as the doctrine it-"self appears to be identical there and here* some "illustrations from the Scotch books may be useful." Now that is entirely on the question as to consent, as to how far consent when proved is sufficient to establish a marriage.

4. (*Dr. Twiss.*) With regard to the Sardinian law, do you speak of that as a provision of the code, or a provision relative to the decisions of courts?——In the book I have referred to, the writer lays down, as I understand it, that it is a provision of the code that the children are held to be legitimate even though there has been a violation of the forms.

5. (*Lord Chelmsford.*) Is it held to be a legal marriage, or is it that the children cannot be illegitimized after the death of the parents?——It is not so. It is that the children, if born of the marriage—I presume where it is in good faith, probably where it is in fraud it may be otherwise,—but if in good faith, although not according to the forms of the code, although the spouses cannot claim their civil rights, the children are held to be legitimate. It may be true, and probably is, that Scotland has adhered longer and more rigorously to the old dogmas, and clothed them less with the mantle of state legislation than most other countries; but I have said enough to indicate how much of misapprehension there is in the notion that the marriage law of Scotland is an anomaly and a monster, clung to only by a people tenacious of absurdity, and tolerant of flagrant scandals, simply on the score of their nationality. This mode of treating the question has probably done more than anything else to prevent a dispassionate consideration of the question of assimilation. These being the principles, the mode of their application in Scotland, as clearly determined, may be very shortly explained. As regards present consent, the law requires this to be interchanged, after proclamation of banns, as matter of order, not as a matter essential. Now, the position of the proclamation of banns is simply this—the original prescription of the proclamation of banns was an ecclesiastical and not a civil order; that is to say, it depended upon the ancient law of the Christian church, and afterwards the Acts of Assembly after the Reformation, and not upon statute; but as they stand now the Act of 1661 refers to banns as being necessary, and the Act of 10 Anne, cap. 7, which relates to the Episcopalian clergy, also relates to and takes notice of the proclamation of banns. The substance of the proceeding is that the banns must be published on three separate Sundays in the churches of the parishes where the intended spouses lived, and that then the clerk gives a certificate to the parties; and they, having that certificate, may go to the clergyman of any denomination, and he is entitled, without incurring the penalties of a clandestine marriage to marry the parties.

6. Is it not a common course to dispense with the publication on three succeeding Sundays, and to publish it three times on one Sunday?——It is a very common practice, but it is not considered to be a regular practice.

7. (*Mr. Dunlop.*) Are you aware whether the certificate generally bears that it has in point of fact been proclaimed three Sundays?——The certificate bears that; but I have frequently heard it done three times—the first, second, and third time—on the same Sunday.

8. (*Lord Chelmsford.*) It would not render the marriage invalid?——No; and under no circumstances would the marriage be invalid. It would not

* 10 Cl. & Fin. House of Lords Cases, p. 534.
† Haggard's Consistory Cases, vol. ii. p. 54.

even make the clergyman officiating liable in the penalties, nor the parties to the clandestine marriage.

9. (*Mr. Walpole.*) The regulation as to banns is a continuance of the old church regulations prior to the Council of Trent?——It is so entirely. In 1661 certain penalties were imposed on clandestine marriages, and that Act is still, in operation I can hardly call it, but is still in existence, and it might be put in force. So that the result of the state of our law at present on that subject is that any clergyman may marry, only he must have a certificate that the banns have been proclaimed in the parish church. It has been made a question; I do not think it is a question of very great importance, whether that restriction of the proclamation of the banns to the established church should continue. The dissenting clergy fret under it rather, and a double process is not altogether convenient. At the same time I am not inclined to lay a great deal of stress upon that. The only other two statutes that I think are important are first, the registration statute which passed in 1854, and has given us a very complete system of registration of marriages. The provisions in regard to the regular marriages may be easily supposed. In regard to irregular marriages, where they take place before a justice of the peace or any person of that description, the parties are bound, and the person pretending to officiate is bound also to give notice to the registrar, and that has been done to a considerable extent. Then the last statute is Lord Brougham's Act, or rather Mr. Dunlop's Act, for prohibiting the Gretna Green marriages, which passed, I think, in 1856, 19 & 20 Victoria, requiring 21 days' residence, and there also the officiator and the parties are bound to give notice to the parishes and make a statement to the effect that they have so resided. I may mention here that that Act has been thoroughly successful, and I believe that at this moment the practice of Gretna Green marriages or border marriages, except to a very limited extent, is extinct.

10. (*Lord Chelmsford.*) In an irregular marriage which did not take place before a justice of the peace, does the registration Act require that that shall be registered?——Yes.

11. All irregular marriages?——Yes, but of course from the nature of them it is not possible to enforce that to the full extent. I shall immediately show the Commission in what way and to what extent that has been done. But although this (referring to banns) is required as matter of order, it is not essential to the constitution of the contract. As mutual consent completes it, the law adopts the logical conclusion that the proof of consent proves the marriage, a conclusion which in purely legal reasoning it is difficult to resist. It enacts no obstacles in proving consent to this contract which it does not provide as to all contracts. Consent must be proved by evidence sufficient to establish the fact. If it is not proved, the proof of contract fails; if it is proved, it is conclusive. And therefore, whether the proof be by writing, or by witnesses, or by facts, the question of the interchange *de præsenti* of matrimonial consent is treated by the law of Scotland simply as a question of evidence, and it gives to the fact, when proved, its inevitable effect. To deny to proof of matrimonial consent this logical effect, is not necessarily to deny the principle on which the contract proceeds. It may be said that the civil authority may fitly prescribe in so important a matter the kind of evidence it will require of the serious interchange of consent, and it may also be said that the public interest is concerned that the fact of the interchange of consent should be left on record, and placed beyond the reach of doubt. I shall say something on both these matters, but I only remark at present that the law of Scotland attributes to the fact, when proved, its logical result. Of course difficult questions of evidence must arise in this, as in all other questions which depend on the proof of facts, especially if these facts are obscure in themselves, remote in point of time, or ambiguous in import. Such are the cases which have occurred, and impressed the public mind with the popular idea of the law of Scotland on this subject. They are not a numerous catalogue. Beginning with the case of Dalrymple, I think not above eight or ten have reached the court of last resort during the century. Dalrymple, Macadam, Craigie *v.* Hoggan, Yelverton, and the last case of Leslie, are those which occur to me as the most striking. The last case would certainly carry the doctrine as far as I think it was possible to go; and if I might without presumption say so, it went, I think, somewhat further than it could go. The case of Leslie was the case of a lady who had corresponded with a clergyman for nearly 35 years, and they addressed each other as husband and wife, but it did not appear that they had ever lived together at all. He died and she claimed the widow's pension. The court held that those letters did constitute marriage, notwithstanding there never had been cohabitation or intercourse apparently of any kind. I think that was about the strongest case I have ever known of the application of the doctrine of *de præsenti* consent. The Dalrymple case is well known. Macadam's case was the case of a gentleman who married his mistress in the presence of a servant by declaring her his wife, and then went into his room and shot himself. That also, I think was a very doubtful case. It is a question whether that decision, if the case were to come again, would be repeated, unless the case of Macadam itself were a precedent, because there was a reasonable ground to doubt whether the present consent was ever truly given there.

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12. It was consent to make a woman a widow?——Just so. It has been found that a consent only to take effect after death clearly is not sufficient. I am inclined therefore to set little store by *causes célèbres* on this subject. The Yelverton case, or the Mountgarret case, or the cases of Dalrymple, or Macadam, no more present a picture of the social condition of Scotland under the existing marriage law than the cases of *Lolly* or *Birtwhistle* v. *Vardil*, or the *Queen* v. *Millis* represent ordinary occurrences in English society. It startled ordinary readers in England to find that after running the course of the highest tribunals in the three kingdoms, it still remained matter of controversy, if not of doubt, whether, by the law of Scotland, the parties in the Yelverton case were married or not. People naturally said it must be a strange state of the law when so much uncertainty can rest on so simple a matter. But the surprise thus created can hardly exceed the effect produced anywhere out of England by a state of law under which a man divorced in Scotland could be transported for bigamy in England, or under which a man could be held illegitimate who was unquestionably legitimate in the country of his domicile. Sensation cases, if I may use the expression, make bad law. Little more than a hundred years ago, on the provocation of a few cases of improvident or low marriages of young men of fortune or expectations, the Legislature rushed into an alteration of the law of England which penetrated to the very roots and foundations of society, created evils which it took 80 years in part to redress, and left results which I fear are not yet removed. I think that while such cases of course are tests of the possible operation of the law, and very interesting and convenient experiments for the speculations of jurists, statesmen must look not only deeper, but in a different direction for safe materials for legislation. It is not to the cases which occur for decision, but to those which never require decision, their number, proportion, and effect, that the social reformer will resort, as his guides to improvement. I should expect to find anomalies, cases of injustice, absurdity, and hardship, in every system of marriage law imposed by civil authority. It is so in most departments of law; but in those connected with the social relations it is inevitable. That system is probably the best, not where they are least startling when they do occur, but in which they occur most rarely. Looking at the question therefore in a general view, I think a lawyer's know-

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ledge and experience in the first instance inadequate to any safe solution of this question of assimilating the systems prevalent in the two countries. For my own part, I can hardly begin to judge, either of the expedience or the practicability of such a system, without the knowledge of facts of which I am to a great extent ignorant. The social effects of the laws of either country can alone lead to any satisfactory conclusion. The main question is, how does the state of the law affect the mass of the people? Its effect on individuals in exceptional cases, whatever their rank or position—its effects on foreigners or strangers, however anomalous—its operation on the young nobility or rich heiresses, form but corners of the great question, and affect it very slightly. The marriage law is pre-eminently a law for the people; and by its effect on them alone can it be rightly judged.

13. (*Mr. Walpole.*) Both the marriage that was proved by the correspondence of the parties in *Leslie* v. *Leslie*, and the marriage proved by the declaration of the parties in *Dalrymple* v. *Dalrymple*, entirely turn upon the question whether consent without intercourse was not sufficient?——Yes.

14. And to prove the consent you need not prove the intercourse?——Certainly, in a marriage founded upon *de præsenti* consent.

15. (*Lord Chelmsford.*) It is the same in England. The rule is *Consensus non concubitus facit matrimonium*?——Yes; of course what I meant was this: in the case of *Leslie*, where there had been a long correspondence without any intercourse at all, it might be fairly doubted whether the expressions in the letters implied a present consent at all.

16. (*Mr. Walpole.*) That is a question of inference from the evidence?——Entirely. Of course consent must be deliberate. The parties to the contract must intend to contract. If the apparent consent is shown from surrounding circumstances or otherwise not to have been serious, there is no contract, as in the case of *Jollie* and *McGregor*. So if the consent be prospective—as in the event of death—or conditional, it is not present marriage. These are the main features of the law of Scotland as to the mode of contracting *sponsalia de præsenti*. But then the law of Scotland also recognises the *sponsalia de futuro*, or as lawyers express it now, the doctrine of promise *subsequenti copulâ*. This, I believe, was introduced by the canon law, and was not in the civil law at all. Now that I look upon as being in a very different category of the law. I believe it is also common to England, or at all events it is to be found in the former English law, and so Lord Stowell says in *Dalrymple;* it is precontract, and apparently the whole position of it was that a promise *subsequenti copulâ* afforded a ground for going to the ecclesiastical court to solemnize the marriage, and then it was subsequently found that a declarator to solemnize the marriage was not sufficient; and now I think the law,—at least the best law, for it is by no means clear,—is that it does not constitute marriage, but gives a ground for bringing an action to declare the marriage, and that unless that is declared during the life-time of the parties, it is no marriage. That is the state of the law. I am not aware that there is anything in regard to the mode of contracting marriage to which it is necessary for me to refer. Of course there is a great deal of learning upon it, but those are the general outlines, and they are sufficient for the purpose of any observations which I have to make.

17. (*Lord Chelmsford.*) I think the third head of irregular marriages, "habit and repute," is really not marriage, but evidence of marriage?——Cohabitation is simply evidence of *de præsenti* consent, and therefore falls under my first head.

18. It is not merely cohabitation. It is more than that, because they must be recognized by the family, by friends, and by the world generally as man and wife. Habit and repute requires all that?——I used the term in the popular or short way. The doctrine is that cohabitation as man and wife, with the reputation and understanding of the neighbourhood that they are man and wife, is evidence of a prior marriage.

19. It is generally stated in the books that there are three heads of irregular marriages—*verba de præsenti*, promise *subsequenti copulâ*, and habit and repute. That is the way in which it is generally arranged?——I think such an arrangement is erroneous, nor is there authority for it. There are only two heads in my opinion—*sponsalia de præsenti* and *sponsalia de futuro;* and these embrace not only the irregular marriages by *verba de præsenti*, or marriage proved by cohabitation and habit and repute, but also all irregular marriages.

20. (*Mr. Walpole.*) Do I rightly understand you to say that the irregular marriage founded upon promise and subsequent intercourse is not held in Scotland to be a valid marriage unless there is a declarator in the life-time of the parties?——I cannot state that to be settled law. My own opinion is so, and there is very high authority for holding it.

21. It has not been decided yet?——It has not been authoritatively decided one way or the other, but that doctrine was laid down by my father Lord Moncreiff very strongly and his authority is considered high on the subject, as being his clear opinion, and I am not aware that there is any authority against it.

22. (*Lord Chelmsford.*) The great text writers say that sexual connexion proceeding on the faith of promise is held to infer present consent as at the time of the *copula*, and so constitutes marriage according to the law of Scotland. Stair, Erskine, Morrison's Dictionary, and the Dalrymple case are all referred to in support of this opinion?——I did not think of going into that question, but if the Commission think it of interest I will give a note as to how it stands. It is material in one view.

23. (*Mr. Walpole.*) It is material in reference to any recommendations as to an alteration of the law?——I think so, because if this law of promise *subsequenti copulâ* is to remain it should remain on the footing I have suggested.

24. (*Lord Chelmsford.*) I had occasion to look into it at the time of the Yelverton case, and it struck me that the authorities show that the marriage was constituted by the *copula* as from that time, not from the preceding promise?——That I quite concur in; I quite concur that the marriage dates when it is declared from the date of the *copula*. In fact the result would be that the declarator by the court came in place of the order by the judge to solemnize the marriage. It is quite obvious that if the lady does not choose to insist on her promise, no one, other than the man, could compel her to do so. If she married somebody else, it would be impossible to try her for bigamy. If either died before steps taken to assert the marriage, it never could be asserted. If she married anybody else that marriage would be good if there had been no declarator in the life-time of the husband. In short that is a question admitting of a great deal of discussion.

25. Probably you would have the kindness to turn your attention to that and to give the Commission the benefit of your views upon it, as it will be most important in the ultimate consideration of the recommendations which we shall have to make?——It is very important in my view of it, because I think there is a clear distinction in the two principles of the law of Scotland between the contract by *verba de præsenti* and that by promise *subsequenti copulâ*. Such is an outline of the legal mode of constituting marriage in Scotland. But the description, if taken as a picture of the *ordinary* mode of contracting marriage in Scotland, as it is often supposed to be, would be utterly erroneous. Even so accurate a lawyer as Dr. Lushington, when examined before the Committee of 1849, said—"I "presume that marriage in Scotland is constituted "by promise *cum copulâ*, or *per verba de præsenti*, "and also by celebration before a clergyman, and I "suppose that but rarely it is done in what we call "in England *in facie ecclesiæ*, at least not very

"often, so far I know." Now that seems to have been the impression on Dr. Lushington's mind, and I believe it to be a very general impression. I do not hesitate to say that if that be so—if the irregular modes of contracting marriage are prevalent in Scotland, to the effect of discrediting the religious sanction, and disregarding the solemnity of the ordinance itself, I should not hesitate at once to recommend its abolition, because such a state of things would indicate a failure of the law to produce the only social results for which a marriage law is valuable. But so far is this from being the case, that the instances in which they occur are so rare as hardly to be appreciable. A marriage by promise requires an action to declare it. I do not say necessarily from its principle, but it is obvious, if the parties cohabit openly after the promise that cohabitation with habit and repute will make the marriage, whatever may have been the form of exchanging the consent before the cohabitation. If they live apart it is not probable that the marriage would remain latent without being made effectual by action upon it, or in a judicial proceeding. I have taken the trouble to ascertain how the fact stands in regard to the proportion between regular and irregular marriages, and I find from the last return of Registrar-General that out of 20,000 marriages there were only 25 irregular marriages, at all events registered by the registrar. That means that there were only 25 that were not marriages after proclamation of banns, and therefore, *in facie ecclesiæ*, or at all events before a clergyman. It is, of course, difficult to arrive at certainty on this matter, but this number includes all the known Gretna Green marriages of that year, as well as the cases of declarator of marriage in the Court of Session. There were thus 25 irregular marriages and 20,871 regular marriages.

26. (*Dr. Twiss.*) When you said that includes all the Gretna Green marriages, how is that? are they obliged to register?——There is an obligation upon them to register. It may possibly be that we have not got the whole of them, but there is an obligation to report them.

27. An obligation on the man who celebrates the marriage?——Yes, I think so. They cannot be legally married without making a delaration to the sheriff. Otherwise the marriage is not legal under the statute, so that if the declaration is made to the sheriff, of course there are the means of registration. I have a note from the registrar in which he explains that.

28. The object of the irregular marriage is to avoid registration?—— No. The object of the Gretna Green marriage is to be able to be married without proclamation of banns, and without going through the ceremony. I was going to call the attention of the Commissioners to the state of the actions brought for the purpose of declaring marriage; because, as I have already shown, where a marriage depends simply upon consent interchanged by *verba de præsenti*, or upon marriage *subsequenti copulâ*, unless cohabitation takes place and the parties live together, that really cannot be expected to be available without some proceedings to make it so. Now I find that for the last five years there have only been nine cases in court upon any ground of irregular marriage, whether by *verba de præsenti* or cohabitation, and habit and repute, or promise *subsequenti copulâ*. There were only four in 1861; there were none in 1862; none in 1863; there were two in 1864, and three in 1865. The total is nine; and these were upon all grounds. The number of cases in which the plea of promise *cum copulâ* was raised was, in 1861, four; in 1862, none; in 1863, none; in 1864, one; and in 1865, three. Now it appears to me that those are very important results, and I may take the liberty of suggesting to the Commission that they might make them more complete, and that it would be very desirable for them to do so. There is another point connected with these facts which I think the Commission ought to elucidate, and that is, that avowed concubinage, I believe, is very rare indeed among the middle and lower orders in Scotland. It is hardly known in the country parishes. That indicates a very important fact, because it shows that where parties do cohabit together, that is to say, where, having married, whether regularly or irregularly, they cohabit, they prefer having the marriage regularly celebrated, and if the Commissioners will only reflect for a moment it is not difficult to see how the law of Scotland, as it stands, contributes directly to that result. For instance, a man cohabits with a woman; he knows that, if he lives with her as his wife, by the law of Scotland he will be married. Both of them are aware of that. He has no interest and no inducement consequently to avoid making their position reputable, and giving her the status in society, because he is quite as much bound whether he does it or not. He cannot escape, and therefore he must either avow that he is living with her as his mistress, or else the inducement to live without the respectability of the sanction of the Church entirely fails, so that in reality the law of cohabitation and habit and repute as proving consent *de præsenti*, instead of tending to encourage connexions without the sanction of the Church, has directly the opposite tendency; and that accounts for the very small number of cases in which an action has been brought to enforce a marriage proved only by cohabitation and habit and repute. The same thing applies to the constitution of marriage by promise *subsequenti copulâ*. If a man gives a girl a promise of marriage, and intercourse follows, he knows that he is married if it can be proved by writing. I should say a word upon that. If she has it in writing he knows that it is a marriage, and therefore he again has no interest to leave it on that footing. He is married; and unless in rare circumstances where the parties intend to marry, but intend to keep it secret, he has no inducement to do anything but marry regularly, and therefore you find on the one hand, providing these statistics are accurate, that in reality the law of Scotland works to the encouragement of marriage; and on the other hand you find an element at all events in the law which directly tends to that result. Such, therefore, is the state of the law of Scotland as it stands. There are one or two other things I should refer to. In the first place, in regard to the doctrine of promise *subsequenti copulâ*, I have said it requires to be proved by writing, or by the oath of the party. It cannot be proved by parole.

29. (*Lord Chelmsford.*) Upon this subject of promise *subsequenti copulâ*, supposing there is no promise or no written promise and connexion takes place and the parties live together, that would be concubinage. I want to know whether that could ever grow by constant cohabitation, into evidence of marriage by habit and repute?——Your lordship will have an opportunity of considering that very carefully in the Breadalbane case which is exactly the question, but there the connexion began. The question in that case relates to a connexion commencing not only illicitly, but in adultery. I will not give an opinion upon that case, but upon the other. I think that though it may be illicit in its commencement, if there is afterwards a clear and undivided repute, that is sufficient. I should say that in that case it would require the repute to be quite clear and quite undivided, but without some clear change, the growth of such repute is improbable. It is, however, right to say that there is high authority for an opposite result. The next question is a question about age. I need not go into the nullities and disabilities of marriage, for they are substantially the same in both countries. The age at which parties may marry is different since Lord Hardwicke's Act, because ours remains under the old law of 12 and 14.

30. A boy of 14 or a girl of 12 may marry without any consent, without the consent of guardian, parents, or anybody?—— They may. That I do not think is desirable, but at the same time while that is the law of Scotland, I have never heard of a

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case in which such a thing took place, therefore if we are to look to the practical results, although that may be the abstract law now as it was the law of England before Lord Hardwicke's Act, I do not think it has produced any very grave results.

31. But if it were to take place it would be considered in Scotland to be rather a shameful proceeding?——Most certainly.

32. It would be very desirable at all events to guard against the possibility of such a thing taking place?——Unquestionably, provided it be done in such a way as not to affect interests still more important.

33. (*Mr. Walpole.*) Though you say that cases are, as one would easily infer, extremely rare, when you take the lowest limit of age at which persons may marry—have you any returns of marriages which have been contracted, say at 18 or 19?——No. I dare say it might be obtained.

34. Could you get us such a return?——I have no doubt that the state of matters in particular parishes could be ascertained from the clergyman. But the other side of this question must be considered, and ought also to be remedied. It is as great a scandal, in my opinion, to forbid a girl of 18, or a young man of 20 in the lower ranks, to marry without consent of guardians, as it is to permit a boy of 14 to do so.

35. I wish to know whether the number of cases of those nearly approximating to that age would not be very different?——I have no idea how that is. I have not the least doubt if you were to refer to the different parish ministers they could give you materials for the purpose. With regard to persons of fortune it is often said that young men of fortune may be entrapped into a marriage in Scotland. I should not think it a matter of the deepest moment if it were so, provided the law generally acted well; but I have never heard of a case of that sort occurring. It is said a man does not know whether he is married or not in Scotland, but I have seldom met a man who was in that position. It may happen with women in England quite as easily as with men in Scotland. I think I have shown however why it is that Scotland has never shown any desire to adopt the English marriage law, and I would strongly press upon the Commission the importance of testing the accuracy of these results, and I think I may add that I believe it to be the fact, although that also is a matter of the deepest importance to inquire into, that avowed concubinage is not prevalent. I may take the liberty of suggesting that this point as regards the law of England is one of the most important subjects that we in Scotland want to know. We wish some information on the social condition of England, as regards avowed concubinage, that we may contrast or compare them with that of Scotland. I have now shown what the law is, and I think I have shown that whatever abstract opinion may be formed upon it, substantially it does operate in the way that one would wish a marriage law to operate. I believe the proportion of marriages performed by clergymen is greater in Scotland than in England. The next question is, are we to alter it? And the first question we ask ourselves there necessarily is, what is the law to which we are invited to assimilate it? I think I may as well frankly state that I do not think it would be desirable, and if it were desirable I do not think it would be possible, to induce Scotland to adopt the law of England as it stands. The only elements for assimilation that I can see must be found in the willingness of English jurists and statesmen to take a step backwards in the direction of the law of England as it was before Lord Hardwicke's Act. I have no great expectations of that being done, and therefore I own I am not very sanguine as to the result of the labours of the Commission as to that general question; but I think I can see some elements which, if the Commission were to deal with a strong hand with both systems might be the groundwork of a code that would be sufficient for each. I will explain to the Commission very shortly what my views are upon that. Now the *principle* of the law of marriage is the first thing to consider. What should it rest on? Should it rest upon prescription, I mean upon enactment, or should it rest upon consent? Now the law of France, as I said, is the only law I know of where it rests entirely upon the provisions of statute without the least reference either to the evidence of consent, or to the religious ceremony. I should doubt about the kingdom of Italy. I am satisfied that the kingdom of Italy does not adopt this principle to its full extent. What France does is this, it says it is nothing but a statutory contract, and it will not look at anything else.

36. (*Lord Chelmsford.*) It is the civil contract before the *maire*?——Yes. Now it appears to me that that is a mistake, and cannot be expected to produce the result that a marriage law ought to produce. As was said by one of our Scotch judges, and has been repeated by Storey, and various writers, "Marriage is the parent of civil society." It is not the child of civil society. The natural contract ought not to be ignored in any state of the law, and therefore if you raise it, or rather reduce it, into nothing but a thing the forms of which are prescribed in an Act of Parliament, I think you lose sight altogether of the nature of the contract itself, which does not depend upon Acts of Parliament. And, therefore, though I do not in the least say that you may not lay down rules of order, or that it may not be a matter of discretion how far the rules of order shall touch the contract in its civil results, or in its results altogether, I think it erroneous to throw aside the view of the contract of marriage as being a thing instituted apart from all human law, and to leave it entirely and barely upon the principle of statutory enactment. I suppose nobody in England would dream of doing that, of making the marriage before the registrar, the only marriage authorized by law. I therefore think that principle is wrong. Then the principle adopted by the law of England is a kind of compromise between the two.

37. I do not know whether it has been ever proposed that marriage before the registrar should be the only marriage, but might not the marriage before the registrar be substituted for the irregular marriages, thus having only two kinds of marriage, the regular marriage by the minister, after publication of banns, or otherwise, and the irregular marriage, if you please to call it so, which would be made regular before the registrar?——I am much obliged for the suggestion. I will reply to that immediately; but in the meantime I proceed to observe that the law of England does not proceed upon the principle of the law of France, but is a compound of different principles. The Commissioners cannot wonder that we do not hold it in the greatest respect, because we think that the alteration of the law of England really proceeded upon grounds and views which were not sufficient, and indeed not suitable, for legislation on so important a matter. There can be no doubt that Lord Hardwicke's Act was passed without the slightest relation to the great masses of the people. It was passed, as Sir James Mackintosh says, "for the purpose of protecting patrimony against "matrimony." It was intended to protect heirs and eldest sons against the designs of the other sex, and the result was that that Act prescribed things which, when applied to the great masses of the people, were utterly futile, such as applications in the case of parents being dead to the Court of Chancery for a guardian, and it made all marriages null in which the provisions of the statute were not observed. The result was that for nearly 80 years there was a battle, in which Fox made his celebrated speech, and which did not finish until Sir James Mackintosh and Dr. Phillimore, not without difficulty, entirely repealed Lord Hardwicke's Act in 1823. But in the meantime there were no words of reprobation spared, not by Scotch people or Scotch lawyers, but by English lawyers themselves, to describe the absurdities and evils which it had produced. Nothing could be stronger than what Sir James Mackintosh said of it, and it was swept away amid universal rejoicing at the time. It is not wonderful therefore that we look with some amount of jealousy upon that system and the system which has

been put in place of it, and which is barely 30 years old; I plainly say I do not quite understand what it is. I have said that Lord Harwicke's Act was entirely repealed; I do not mean in form, but in substance. What has been put in place of it, I profess not to know. I read in the Act of 1824 many provisions; but what the effect of non-observance of these provisions is I cannot tell, and I have never found any one who could instruct me. I do, however, see that the law of England has an important element in it, which, if the Commissioners saw their way to it, I think might be made a kind of standing ground between Scotland and England. The present law provides that where parties marry without consent when they are under age, if they continue to cohabit when of age or above age, that that shall stand good as a marriage. Now, that is really nothing but giving effect on a limited scale to the doctrine of cohabitation, with habit and repute, because it enables the mere cohabitation to legalize that which under the statute is prohibited. What I am more anxious to point attention to is this: Lord Chelmsford was kind enough to suggest that there might be two modes of marriage in Scotland, the regular marriage and that before the registrar. But to provide for marriage before the registrar would have no weight, and be of no use whatever. I do not know what the feeling in England may be. I have a great idea that the effect of Lord Hardwicke's Act in England was gradually to do away with the feeling of reverence of the people for the religious ceremony; but in Scotland there is no want of that feeling. There is no difficulty in regard to marriages founded upon a disinclination to have them performed in the face of the church. Where irregular marriages are resorted to, they are resorted to for the purpose of being clandestine, and then only. I think I have shown that that is a rare occurrence; but to legalize a marriage before the registrar in Scotland would be simply to go against the feelings of the people, and produce no effect whatever, because I do not believe that, except in very rare instances indeed, anybody would ever take advantage of it. The only effect of such a provision would be to give the sanction of Parliament to what are called Gretna Green marriages. The real difficulty is this: if you prescribe forms and orders, are you to annul the marriage if those are violated? Which is the greater evil and scandal, that parties shall marry clandestinely, and that you shall not have the means of ascertaining that they are married, or that by the operation of the statute they shall live together without being married at all, because the alternative is this—either they come together without any legal sanction and without being married, or they are married clandestinely. Which is the better of the two? Now, I have the clearest opinion that, taking it as an abstract question, it is better to allow the operation of the correct principle of consent, even although the marriage may be secret, than to force persons into concubinage by the operation of the statute, and there truly rests the whole question. That is the matter which we in Scotland have to consider when it is suggested to us that there might be a law for the whole kingdom. I do not myself at this moment propose to solve it to its full extent. There are only two or three other suggestions that I would make; the first is that it would be desirable to know to what extent concubinage prevails in England as compared with Scotland, because it appears to me that that may be fairly taken as one test, at all events, of the operation of the law. If there is less concubinage in England than in Scotland, then I would conclude that the marriage-law operated in favour of marriage; but if on the other hand the reverse is the fact, it would be a strong thing in the first place to ask that Scotch to accept that law, and in the second place it would show the demoralizing tendency of the law of England in England. My own impression is exceedingly strong, that the necessity for these marriages before the registrar has very greatly arisen from the operation of Lord Hardwicke's Act, although that Act is now done away with; and that it will be found that the restrictions put upon the natural element in the constitution of marriage by the statute have truly driven a great many persons in the middle and lower ranks to disregard it altogether.

38. I would interpose here by mentioning an interesting fact that we have from the Registrar General an account of the numbers of marriages for several years celebrated at the office and in the presence of the Superintendent Registrar. In 1841 the total marriages solemnized were 122,496, and before the registrar 2,064. Taking the last year that we have got, 1864, the total marriages were 180,387, and before the registrar 14,611, showing a great increase in the number of marriages before the registrar?—It appears to me to be an important element in the question to ascertain how many persons live together in concubinage.

39. (*Lord Lyveden.*) The number of illegitimate children would not prove the amount of concubinage?—No; I think you could by examining the clergy or officials throughout some of the more populous parishes, ascertain to what extent that did or did not prevail.

40. (*Lord Chelmsford.*) With regard to irregular marriages, I should like to ask you whether in your opinion it is desirable that they should remain on the footing on which they are now.—At present they are an offence against the law, and the parties are punishable. It used to be a way of recording a marriage to go before a justice of the peace and accuse themselves of the clandestine marriage, whereupon they were fined, and a record of the marriage was obtained in that way. Do you think it is a desirable thing that an irregular marriage, which is an offence against the law, should be regarded as valid?——A distinction must be drawn between an irregular marriage and a clandestine marriage—marriages by *verba de præsenti*, or promise *subseqenti copulâ*, or proved by habit and repute, are not illegal in any sense. Clandestine marriages are those in which there has been celebration of some sort without proclamation of banns, and to such alone the penalties of the statutes apply. But apart from this, I should say that if that were the only element in it, I should not consider it sufficient to introduce a change in an important system. It must be quite manifest that if the marriage by cohabitation, and habit, and repute were to be done away with, you would alter the whole operation of the law of Scotland on that matter, and you in all probability would induce a great many parties to go on living without any religious ceremony at all, and in a state simply of concubinage, because having commenced in that way they would have no inducement to alter it. I think the law of cohabitation and habit and repute ought not to be altered at all. On the contrary, it appears to me that the law of England would do well to extend the doctrine of cohabitation and habit and repute as implying a regular marriage, certainly to cases in which there has been any flaw in point of form. No one can deny, looking at any individual instance, that there can be no greater hardship or cruelty than that parties who have lived together for years as man and wife, and brought up a family and been recognized by the neighbourhood as such, should be rent asunder on the ground that they have not complied with the statute. It appears to me that if the law of England were modified to that extent, we should then certainly have a kind of bond which might draw us still more closely together. Although I do not express the opinion with any confidence, for I know that people have different opinions, it does not appear to me that the law of promise *subsequenti copulâ* should be retained. I am against its retention, for this simple reason, that the promise is required to be proved by writing. One can well see that if you could always prove the promise it would be a very just law, but it does not operate as a just law, because if, except by writing, you cannot prove it, and consequently, it is not one case in a hundred that is reached by it; and I am half afraid that the cases that are reached by it are just the cases that ought not to be. That is my general view. I also think

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that in any assimilation of the laws of England and Scotland, consent *de præsenti* should not be available to prove a marriage after a certain interval unless followed by open cohabitation.

41. Is your objection to the prescription of form so great that you would object to the prescription of some specific evidence, or the evidence of some specific act as evidencing consent?——That raises the whole difficulty. There is no doubt that in cases in which cohabitation and habit and repute make marriage, although the law presumes that there has been a formal consent, in the greater part of the cases there has been no specific consent, but only a benignant presumption of consent by the law.

42. I am referring to cases where there has been no cohabitation and habit and repute, but simply depending on the consent *de præsenti*?——I think in the cases where there has been no cohabitation, and where the constitution of the marriage is proved by evidence of consent, it should in all probability be so, at least after a certain interval of time.

43. (*Lord Chelmsford.*) Do you not think it very desirable that in these cases of clandestine and irregular marriage some evidence of consent and registration should be required?——There is no doubt at all that it is desirable on the one hand not to fetter the natural contract too much, and on the other hand to obtain, if you can, certain evidence that the marriage has taken place; but it is also quite clear that you cannot do that in cases where the object and intention of the parties is to conceal their marriage; neither can you by any possibility register a marriage proved by habit and repute. My opinion has been already expressed, and I think it is very strongly confirmed by the statistics to which I have referred, that the law of habit and repute operates directly in favour of regular marriage, and I do not think that the difficulty of registration is a material one.

44. Do you think it desirable that the law should encourage the object of parties in concealing these legal marriages?——I can hardly say that the law does so. I would rather say that the question is whether the law, in the attempt to discourage irregular marriage, should indirectly discourage marriage altogether, as Lord Hardwicke's Act unquestionably did. On the contrary I think the law, as I have shown, encourages exactly the reverse, and that the result of the operation of the law is to encourage regular marriages, and to take away from the parties any inducement to remain in a state of concubinage. On the question whether it is better to force them into a state of concubinage or to permit the law to remain on its present footing, I should have no hesitation in answering in favour of the second alternative, because I see that the effect of the reverse would be probably to diminish the number of regular marriages, and to increase not irregular marriages, but what is a great deal worse, illicit unions.

45. (*Mr. Walpole.*) You stated some little time ago that out of, in round numbers, 20,000 marriages which were contracted in one year according to the census there were not 25 which were irregular marriages. The inference you wished to draw from that, which seems a very striking inference, was that the present law of Scotland encouraged at some time or another the regular marriage to take place?——Yes.

46. Where an irregular marriage has been made by mutual interchange of consent, is there any evidence whatever as to that marriage, how often that marriage has been contracted, or how soon *in facie ecclesiæ* afterwards?——No; there is no evidence on the general census, and I do not suppose there could be; but on that matter the clergy of the populous parishes could give a great deal of information. I know that in Lord Rutherford's committee in 1849 information on that point was tendered, although the committee resolved that they would only hear legal evidence. The names of some of the witnesses, including clergymen and others, who would have spoken generally on the subject will be found prefixed to the report.

47. Does not the fact that the marriage takes place *in facie ecclesiæ* at no very distant period afterwards rather indicate the importance and propriety of having some law to enforce the registration of marriage within a limited period?——If the marriage takes place *in facie ecclesiæ* it must be registered; but if you compel the promise to be registered, you of course abolish the effect of the promise.

48. What was passing in my mind was this, that supposing it turned out as we may assume for the moment for the sake of argument, that out of these 20,000 regular marriages to which you have referred, a great number of them were irregular marriages, which became regular within a very short period of time after the consent was interchanged, would not that rather indicate the propriety of having some law to require the registration of the marriage or the solemnization of it in the sense of having it *in facie ecclesiæ*, within a limited period?——Within a limited period of the promise?

49. Yes.——An obligation to register is plainly inconsistent with the law of promise *subsequenti copulâ*, and inapplicable to marriages so contracted. Neither has it any force in the cases supposed, because if the parties marry regularly afterwards, then they are married beyond all question. The main object I had in view was to show that the doctrines, both of the *sponsalia de præsenti* and of the *sponsalia de futuro*, had a direct tendency, or contained an element which tended to the encouragement of regular marriages, and I supported that by saying that in the first place, as far as you could gather, though I admit that the statistics must be imperfect to a certain extent, the proportion of regular marriages in Scotland was not less than in England.—I have not got the figures exactly here, but they are in the census reports, and it will be found that the proportion of regular marriages to the the total marriages, as far as we know them, is greater in Scotland than in England, and in the second place, because the cases brought into court to declare irregular marriages are so infinitesimal as not to require consideration.

50. (*The Attorney General.*) I do not quite see the grounds on which it should be supposed that a law which would decline to take notice of any marriage at all until it is registered, would tend to discourage regular marriages. If even under the present system there is a tendency in irregular marriages to become regular, why should there be a less tendency if the law had simply required regularity?——The view I have already fully explained was this. Take the doctrine of habit and repute. Two parties wish to live together; they know quite well that if they are reputed man and wife they will be held to be married, and the consequence is that they have that marriage solemnized regularly; but if, on the other hand, you do not attribute the effect of marriage to cohabitation and habit and repute, these parties will continue to live in concubinage, and never tell the world whether they are married or not. That is the way in which it operates, and I believe to a very large extent. If I am right in my statement, avowed concubinage is hardly known in Scotland, especially in the lower ranks in the rural parishes.

51. (*Lord Chelmsford.*) If the proportion of regular to irregular marriages is so very small, I do not at present see what objection there can possibly be to get rid of those irregular marriages, more especially as they are an offence against the law at present?——Simply because you would alter entirely the relations of the parties who are now married in the face of the church; that is to say, these irregular connexions, instead of ending in regular marriages, as they do now under the present state of the law, would never become marriages at all.

52. (*The Attorney General.*) Supposing it not intended to take away the doctrine of habit and repute, and marriage by consent, but merely that the law said that until such a marriage should have been publicly acknowledged and recorded before the registrar, it should not be noticed for civil purposes or civil effects,—so that any feelings or social ideas connected

with it should not be interfered with by the law,—might not the views of morality and propriety which now prevail in Scotland prevail still? What stigma would be put on persons who live respectably in the eyes of their neighbours by merely telling them, "if "you do not wish your children to be without a legal "status you must register your marriage?"——I have said that an obligation to register is inconsistent with the doctrine of promise *subsequenti copula*. In the case supposed you would then take away the strong inducement that there is to complete the marriage in the face of the church by the knowledge of the parties that they are married, although they have not gone through the ceremony.

53. I should have thought that would have tended directly the other way.——It does not operate so, and the principle is obvious. A man begins to cohabit with a woman. Suppose they are in England. He is not prepared to marry her in the face of the church or to marry her in any other way. He is not prepared to give up the connexion, neither is he prepared to announce to the world that they are not married, and they live as man and wife although there is no marriage between them. They cannot do that in Scotland, because if they do it in Scotland they are married, and the result is that, the inducement to continue the connexion in a doubtful position is taken away, and they go through the ceremony. It is plain how it would operate.

54. Would it be possible in cases of habit and repute that the parties might be called upon to declare whether they were married or not?——All these things would entirely frustrate the operation of the law as it stands now. You might just as well prescribe absolutely that no marriage should be recognized that was not celebrated in the face of the church as insist upon its not being available unless it were registered; indeed much better, because, as I have already said, there is no objection in Scotland to the celebration in the face of the church where it is intended to perform the marriage openly. I do not think that is an element which affects us at all.

55. (*Dr. Twiss.*) What I understand you to say is this, that parties who wish to cohabit in order to avoid contracting a marriage involuntarily by habit and repute, as a matter of course contract marriage regularly?——That is so. They must either announce that they are living in concubinage, which in nine cases out of ten they will not do, or else they are married.

56. (*The Attorney General.*) But surely parties cannot contract marriage by habit and repute, contrary to intention. They must know the state of the law, and they must create the habit and repute by treating each other as husband and wife?——Certainly, but the law operates by a presumption of intention. If you propose to add to that presumption clear evidence of the fact, you may discard the presumption altogether. That is exactly the reason why the law as to such marriages works beneficially. A couple treat each other as husband and wife. There is nothing to indicate that they do not mean to be married; but if that take place in England they are not married; in Scotland they are.

57. It seems to me, under those circumstances, that you start with the *animus* of marriage. If there is the *animus* of marriage, and it is known, it may be contracted in one way; but supposing it is known that in point of law it cannot be contracted in that way, but requires something more, the *animus* of marriage would lead to that something more being done?——The law presumes the *animus* of marriage from the fact of cohabitation coupled with habit and repute, and inquires no further; and if parties do not mean to be married they must not allow the reputation to arise along with the cohabitation. The question is, whether that is a beneficial presumption or not? I think it operates directly in favour of regular marriage, and I am corroborated in that by the fact that there are so few cases for declaring marriage by the proof of habit and repute; and on the other hand, that the proportion of regular marriages in the face of the church is so large.

58. (*Lord Chelmsford.*) If the cohabitation commences in concubinage it cannot very well grow into marriage except by a notorious change in the relation between the parties?——There is strong authority for that proposition, but in the general case it may often be very difficult to show that it did not begin in marriage. The question of whether, if it begin in a connexion purely illicit it cannot pass into marriage without a change in the connexion, is the topic which the Court of Session will have to decide in the Breadalbane case. But there was a strong argument in that case to the effect that even if a connexion commenced on an illicit footing could become marriage without a clear change of relations, such could not be the case where the parties were in such a position that they could not contract marriage.

59. (*The Attorney General.*) What presses upon my mind is this: Nobody can be the husband of a wife by habit and repute, except by his own will. It is his own conduct which induces the reputation, and that is because he is desirous of being married; and if he wishes not to be married, he will not so act as by habit and repute to be a husband. As it depends upon his will whether he will be married or not, I confess I cannot see any reason to suppose that he would not, having the will to marry, comply with the legal requisites.——I understand that in the metaphysical view, but as applied here it is reasoning in a circle. You may say that if the presumption raised by cohabitation and habit and repute be a true one, the parties will prove the fact by avowing it. But it seems to me clear that if that reasoning be logically carried out, the presumption of law is useless. It is only useful where the fact is doubtful. Practically, I cannot doubt that the view I have suggested operates to a very large extent, namely, that as connexions continued in concubinage necessarily would become marriage, unless there were a clear intention to the contrary, the parties would have no interest to continue in that state, and not to be married in the face of the church.

60. You admit that the proposition that connexion commenced in concubinage would necessarily become marriage, unless parties did something to evince a contrary intention, does not represent the law of Scotland?——I do not suppose the proposition in those terms was ever maintained or suggested. What I should state would be this, that if persons cohabit, there being nothing to show whether they are cohabiting as man and wife or not in the first instance, but who obtain the reputation, and are understood to be married, and continue that cohabitation, then such a cohabitation would prove prior marriage. It is sufficient to prove it. Of course, as in the case of *Balbougie*, which I dare say Lord Chelmsford may recollect, where a man had lived with a woman as his mistress in a position about which there could be no question at all, and then took her home, where she lived in a kind of divided repute, the House of Lords held that that would not make a marriage; but there the repute was divided, and the connexion commenced in concubinage about which there was no dispute, and it was held that evidence of some clear change of relations was necessary. The case I put is this: that where there is nothing to indicate either the one relation or the other, in the first instance, but parties come together and live together, and in their living they are reputed as husband and wife, and there is nothing to the contrary from the beginning of the connexion, that of itself will be sufficient to prove a marriage. It would not be sufficient to *constitute* marriage, because, as I have already said, I do not hold that habit and repute constitute marriage, but the evidence of marriage.

61. (*Dr. Twiss.*) The intention is a legal presumption?——Yes.

62. (*The Attorney General.*) I should like to have it clearly explained how a commencement of reputation can arise under such circumstances, except by the man treating the woman as his wife, and she treating him as

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her husband?——Of course it cannot arise in any other way.

63. Then in that known state of the law he must intend her to be his wife?——The law will presume that he does. But if you put it to him that he has to go to the registrar, and say so, the presumption vanishes.

64. (*Lord Chelmsford.*) I do not see in the case of habit and repute as evidence of marriage so much objection to his going to the registrar, because it must be notorious that they are living together, notorious to their friends, and, as they say, indeed to the world in general, that they are living together as man and wife, I should think there would be less objection in a case of that kind which requires notoriety, that a party should have to go to the registry to record his marriage?——You import into it another element of notoriety, which denies effect to the presumption. The law says cohabitation with habit and repute shall be evidence of consent. If you say it shall not be evidence of consent, unless consent is proved otherwise, the reason and principle of the law, and of course all its practical operation, are defeated. I should think there would be great objection to that, and in fact you might quite as well prescribe that they should go to the clergyman.

65. (*Mr. Walpole.*) Does it not amount to this, that for some reason or another they do not object to give a declaration in writing, of the mutual consent being given, but they object to record that consent?——There may be no writing in the case put.

66. I am taking the stronger case where there is writing, where there is an actual interchange of mutual consent by writing, and therefore where there is a declaration that the marriage *per verba de præsenti* has taken place; does not the objection amount to this, that they do not wish to put upon record the consent which they have exchanged with each other?——If that is the case in a marriage by *verba de præsenti*, it is an irregular marriage.

67. That is for the sake of concealment?——Undoubtedly.

68. And is that carried on to any great extent, do you think?——It would rather appear as if it were not. My own belief is that where there is an interchange of writings very often the connexion commences in that way, and that if there is a family afterwards they are married in the face of the church.

69. (*The Attorney General.*) You just now said that it might be as well or better to go to the clergyman. I do not know whether you have been informed that one of the modes of solving some difficulties in Ireland and in this country, which have been under serious consideration, but of course not agreed upon, is to make every clergyman, who is the officiating minister of any place of worship whatever, a local registrar *quoad hoc*, so as not to require that a man shall go to a lay registrar if he prefers going to a clerical one, to give the character of registrar for the purpose of local registration, not only to certain civil registrars but also to the officiating clergy of any place of worship, so that anybody might go to such a place and record his marriage in the simplest way possible.——I do not think that would obviate any of the difficulty in Scotland, because, as I have said, there is but little repugnance to go to the clergymen, and by the law as it stands, when a certificate of the proclamation of banns has been obtained, any clergyman can marry, and that clergyman gives notice to the registrar of the district of the marriage, so that I do not think that that feeling, though it, no doubt, operates in Ireland and in England too, affects Scotland.

70. It would remove any question between going to the civil registrar and going to the clergyman.——There is little question in Scotland about that. I should say if it was the intention to make any regulation at all, that the better and more popular regulation in Scotland would be to compel the religious ceremony.

71. That might be accepted by the majority; but might there not be a minority to whom it would be considered so unacceptable that it would be exceedingly questionable policy to introduce such a regulation?——I am only speaking of my own impression.

72. (*Lord Chelmsford.*) Considering the infrequency of these irregular marriages, do you see any reason why parties should be indulged in being allowed to keep their marriages secret, when so very few persons seem to take advantage of that law?——I am afraid there would not be so few if the law were altered.

73. I do not quite follow that?——If you prescribed it absolutely, and did away with the general view that consent makes marriages, and may be proved in the ways prescribed by the law, and if you compelled a ceremony, the result would be that a great many persons would not marry at all who marry now.

74. Suppose the plan suggested by the Attorney General were adopted, so that each minister or clergyman was a local registrar, or suppose it was required that there should be a registration of these irregular marriages after they have been performed, in either of those two ways there would be publicity of some sort given to the marriage. Is there any reason why parties who contract these illegal marriages, as in fact they are, should not be required to make them known in the same way either before or afterwards?——I fear I can hardly answer that without going over a good deal of ground again. An irregular marriage is not illegal. The real question is, whether you are to annul all marriages to which consent has been given unless certain things have been done. I am in favour of maintaining the old law by which, if the consent is proved, that shall be held to be a marriage, even although you should prescribe as matter of order certain ceremonies and forms. The whole spirit of the law is founded in this, that while you prescribe matters as matters of order and hold yourself entitled to punish, if they are not done; on the other hand you do not hold yourself entitled to refuse to give effect to matrimonial consent.

75. (*Mr. Dunlop.*) What do you say to the case of a second marriage by one of the parties who has given consent and agreed to a marriage by consent, of which there is no record or publication?——Of course that is a great scandal and a great difficulty; and in anything I have said I do not in the least shut my eyes to that. It is a choice of difficulties and evils; but for every difficulty of that kind suggested on the one hand you may find a difficulty and scandal on the other.

76. Would you propose to make any exception or qualification of the effect of these clandestine marriages in such cases?——My own impression is that a promise and consent interchanged, not followed by cohabitation, ought not to receive effect, at least after an interval of time.

77. Do you mean proclaimed and published cohabitation?——Open cohabitation. I think it is a question whether that should be continued, but I only say that in the view of assimilation, because my opinion is that if there is to be no assimilation—if you are not to accomplish the object of having one law for both ends of the island, I do not think there is sufficient evil in Scotland to render it necessary to interfere with a system with which the people are satisfied.

78. (*Mr. Walpole.*) Do you think the people of Scotland, generally speaking, would be very tenacious of the law of consent?——In 1844 Lord Rutherfurd introduced a bill; and at that time I must own I was very favourably disposed towards it, for the purpose of registering,—very much what the Attorney General has suggested, at least very much for the accomplishment of that object—but it raised a storm which obliged him to abandon it.

79. And the storm was general?——Yes. There was a very able speech of the present Lord-Justice General in 1849 upon that subject.*

80. (*Dr. Twiss.*) I think you would abolish the marriage by *verba de præsenti* and the marriage *subsequenti copulâ*, unless there was continuous cohabitation?——That was what he did, and I think in

* See Parl. Debates.

hat direction something might be done. What I have been trying to suggest is that that law might be extended in England, as it was to a certain extent extended to marriages of minors. If that were so, I think there might be the foundation for a common system. On the whole, I should object to alter the law of cohabitation, with habit and repute, and I should object to alter the general principle that marriage is constituted by consent *de præsenti*. I think the question of retaining the law of promise *subsequenti copulâ* is one very deserving of consideration.

81. (*Lord Chelmsford.*) You think that even with regard to marriage *per verba de præsenti* it would be desirable to have cohabitation afterwards in order to make a legal marriage?——I think if we could come to terms, so to express it, that that might be done. It would not be contrary to the principle, because you might fairly say that it was an element in the reality of the consent, whether the parties lived together or not.

82. (*The Attorney General.*) You stated, I think, that taking only these Scotch marriages which are regularly solemnized, you do not find that they are in less proportion to the population than in England?——That is substantially so.

83. If that is so, may not we assume that the same motives of morality and of natural consideration for children prevail on the whole as largely in Scotland as in England, and that under any circumstances one might expect that if the law were not too difficult to comply with it would be as largely complied with in Scotland as in England?——I had suggested it as a matter for the inquiry of the Commissioners, and I think that truly would bring out the fact, whether the avowed concubinage was more frequent in England than in Scotland. The impression which I took the liberty of stating was, that Lord Hardwicke's Act had greatly tended to discredit the religious ceremony in England, and that an inquiry would show that that which was almost unknown in Scotland is not only not unknown but by no means uncommon in England, especially in some parts of it.

84. What is almost unknown in Scotland?——Avowed and continued concubinage amongst the lower orders.

85. In the towns in England, and I had imagined in Scotland also, it is common enough; but in the rural districts of England, as far as my knowledge goes, I should not think it cannot.——I do not speak from my own knowledge, only from impression; but that is a matter on which inquiry ought to be made. I had inquired into the matter of illegitimacy in Scotland. There is no doubt that illegitimacy in Scotland holds a higher figure than is at all creditable to the morality of the country; but, on the other hand, there is no doubt that a very considerable number of the mothers of those children are married afterwards. In many of the counties it is an understood thing among the lower orders that if a girl has a child she is married, and if she has not a child she is not married.

86. And so, no doubt, it is in the north of England?——Yes.

87. What are the figures?——I have got the North Riding of York, Northumberland, Cumberland, Westmoreland, and Scotland. Scotland I suspect is too low, because I have taken the whole of it. If I had taken some counties it would be higher. In 1855, the per-centage was, Scotland, 7·8; North Riding of York, 8·6; Northumberland, 8; Cumberland, 10·6; Westmoreland, 10. In 1856, Scotland, 8·5; North Riding, 7·6; Northumberland, 8·1; Cumberland, 6·5; Westmoreland, 5. In 1857, Scotland, 8·5; North Riding, 8·3; Northumberland, 7·7; Cumberland, 10·1; and Westmoreland, 8·6. Cumberland I find comes completely to the head afterwards, because it gets as high as 12·1.

88. (*Mr Dunlop.*) We have counties beyond that?——Yes.

89. (*The Attorney General.*) How, in Scotland, are those statistics obtained?——From the Registrar General.

90. That seems a large proportion, having regard to your theory, is it not?——It has no bearing on anything. I do not think that illegitimacy is a test of concubinage in the sense in which I am speaking of it. There is no doubt whatever that the number of illegitimate children born is scandalous, but these are not the children of persons who are living as husband and wife at all. They are the children of casual connexion in the first instance, very often ending in marriage. I do not know that even the comparative morality can be absolutely determined by that.

91. That would perhaps be equally true in England?——I think it has a bearing on the doctrine of the promise *subsequenti copulâ*, though what bearing I am not quite prepared to say.

92. (*Dr. Twiss.*) Have you any means of ascertaining the number of children legitimated in Scotland?——No. I was going very strongly to urge upon the Commission to consider whether it would not be right to alter the laws of England on that subject.

Additional Note by the Lord Advocate.

The authorities on the question whether promise *subsequenti copula* constitutes *ipsum matrimonium*, or is only ground for a declarator of marriage, will be found collected in Mr. Fraser's work on the Domestic Relations, vol. i., pp. 150–190, where the question is fully and learnedly argued. There are no doubt expressions both in Stair and Erskine, and more emphatically in Lord Stowell's judgment in Dalrymple, which point to the former result. On the other hand, the text writers in the passages in question are not dealing with the distinction between *ipsum matrimonium* and a precontract, which, though indissoluble, is yet only available during the lifetime of the party, and through the instrumentality of judicial proceedings. Lord Dirleton in his Doubts * states it as a question whether, if a party die during an action to declare such a marriage, his children can appear and continue the suit; and Lord Moncreiff, in the case of Browns against Burns, expresses himself in the following decided terms:—

"If the material fact is proved by the documents it is *very* marriage, without the necessity of any process; and the children of such a union could establish their legitimacy after the death of one or both of their parents, though no declarator of marriage had ever been brought in their lifetimes. In this the case entirely differs from another, which is often confounded with it, that of a promise of marriage, *subsequenti copulâ*, which by due process may be reduced into marriage as furnishing a legal ground for declaring a marriage to have been thereby constituted. But the difference is great in this point, that *declarator* is essential to the *constitution* of marriage in that case, and that if no such declarator be brought in the lifetime of both parents the marriage can never be established afterwards. It is not at all so in regard to written declarations of marriage *de presenti*, or declarations of such consent to marriage *de presenti* before witnesses. These may be effectually proved at any time; and the only difference between them is, that where the matter is disputed the writings prove the case at once, if the genuineness of them be proved or admitted, whereas of course parole evidence of verbal declarations, which are denied, must be adduced."

I incline strongly to this view of the question; nor am I aware of any case in which such a marriage was ever held binding without declarator, or in which it ever received effect after the death of either of the parties, if no proceedings on it had been taken previously. The case of bigamy I hold to be quite clear, and I believe a prosecution on an alleged prior marriage so constituted was never attempted or thought of.

There are one or two remarks I should wish to subjoin to my evidence.

The main result of the difference between the two systems is the effect on the offspring. There might be something to be said for a stringent and exacting code as between the spouses, who at least may know the law. But to visit the children with illegitimacy because of the omission of forms and ceremonies having no relation to the essence of the marriage tie is inconsistent with the most elementary principles of justice or sound policy. In considering the state of the law in countries abroad, this point might be kept in view with advantage. England, I believe, stands entirely alone in repudiating the principle of legitimation by subsequent marriage. But it would be desirable to know whether it does not also stand alone in denying effect to the

* Voce "Sponsalia."

Right Hon. J. Moncreiff.

17 Feb. 1866.

principle of good faith on the part of one or both of the spouses in legitimating the children. See Code Civil, 201, 202, 203, from which it appears that in France a marriage, although null, will, if contracted in good faith, produce civil effects, both as regards the spouses and the children; such I understand to be law in all the countries which have adopted the Code Civil. The Canon Law held the children of a putative marriage, although null, to be legitimate, and this prevails in Austria, Spain, and Portugal. This is to my mind one of the most important views of the subject; for a system of law which contains strict and exact prescription as to forms of marriage, and denies effect to good faith in the event of their not being complied with, presents a double impediment to the operation of the natural contract.

I may further remark that it is very doubtful whether the too stringent enactment of rigorous forms attains the object of certainty, which can alone recommend it. On the contrary, to make forms essential may introduce, in many cases, the additional uncertainty, as to how far they have or have not been complied with. It would be interesting to know whether the proportion of cases of bigamy is greater in England, where forms are essential, or in Scotland, where the substance of consent is alone regarded. This might afford a very certain test of how far any additional security is really afforded by the law as it stands in England.

The substance of my suggestions, with a view to assimilation, would be the following:—

As regards the law of Scotland, to abolish the law of promise, *subsequenti copulâ*.

To restrict proof of consent *de præsenti*, when the marriage is not registered, and the parties have not cohabited together openly, to a period of three years from the date of the alleged consent.

To refuse to either of the spouses their legal rights as regards the property of the other, *inter se*, unless the marriage should be registered. I would deny the widow her terce, or *jus relictæ*, or the husband his courtesy, in all cases in which the marriage was not registered. This suggestion, the principle of which is obvious, would of course require to be much more specifically worked out before it could be practically adopted.

And as regards the law of England,—

1. To allow the principle of open cohabitation and repute to cure all defects in form after a certain period.
2. To recognize the principle of good faith on the part of one of the spouses as sustaining the legitimacy of the children.
3. To adopt the principle of legitimation by subsequent marriage.
4. To alter the age in both countries at which marriage may be legally contracted without consent of third parties.

Wednesday, 21st February 1866.

PRESENT:

THE RIGHT HON. THE LORD CHELMSFORD.
THE RIGHT HON. THE LORD LYVEDEN.
THE RIGHT HON. SPENCER HORATIO WALPOLE, Q.C., M.P.
TRAVERS TWISS, ESQ., Q.C., D.C.L.

LORD CHELMSFORD IN THE CHAIR.

Bishop of Oxford.

21 Feb. 1866.

The Right Rev. THE LORD BISHOP OF OXFORD examined.

93. (*Lord Chelmsford.*) Your Lordship has been kind enough to say that you would attend here and give us the benefit of your experience with regard to matters connected with the Marriage Law of England?——I saw the working of that part of the present law as to which I am of opinion that some change should be made, when I was for five years rector of a large parish in which a very large number of marriages were celebrated. It was one of the chief places to which marriages which wanted to escape observation flowed from the surrounding county. A large number of marriages of non-parishioners took place in it. The effect of this was, that those who wanted to be married and who ought not to be married—persons within the forbidden relationships and the like—flocked to my parish and another in the neighbourhood from all the neighbouring county. It was known that there was this great number of marriages. It was impossible by any diligence to trace them all out, and therefore they came to those places. The great object which it appears to me in this branch of the subject is to be aimed at is, to reduce to a legal minimum the temptations to all persons who wish to be married, and to whose marriage there is no objection, to come to such centres as my own parish at that time was, because every good marriage of distant persons covers, or at least forms the opportunity of covering, the bad marriages. Therefore the great object which I have in view is to obviate that. I believe that many persons shrink from being married in their own parishes from perfectly allowable motives. Amongst the poorer people the young man who is going to be married is commonly expected to treat all his acquaintance. If he does not do it he is treated with a visitation of "rough music," or some other mark of the disapprobation of his acquaintance. The consequence is, that it becomes a very serious thing to him to be married in his own parish; and so well-conducted young persons, as to whose marriage there is not the slightest objection, are driven to some of these places where they can be married without observation, in order to avoid this annoyance. These persons form the cover under shelter of which those who come for a bad purpose resort. Therefore, it seems to me that some remedial measures should be adopted to meet the cases of those who desire to marry in distant parishes from these allowable motives; and my own belief is, that in a great degree they might be met by adding to the present system of marriage by banns a judicious system of licensing. I think, if every clergyman were allowed to issue a marriage licence to his own parishioners, under certain restrictions, as to the mode of obtaining it and the like, which I shall mention afterwards, and then was able to send the parties to the parish they desired, in that case you would bring the parties who wished to be married to their own clergyman. They would go with his licence to the clergyman who was to marry them, and then there would be an end to the picking out of these places where there is a crowd of marriages. There would then be no motive for resorting to them. The clergyman who gave the licence would pass them on to some brother clergyman, whom he probably knew well; this clergyman would at once see that all was right; whilst persons who wanted to get married surreptitiously would have greatly increased difficulty in getting married, because they would not be willing to go to their clergyman for his licence. I think the granting of the licence might be guarded very much with the restrictions of the old law; I mean that if the two persons belonged to the same parish, both should apply for the licence, and I think it would be only reasonable to require, according to the old law, that they should have some persons as compurgators for them who should be able to answer for them that all was right. The only object of banns is to ascertain that there is no objection to the marriage, and I think that would be better done by throwing on the clergyman the responsibility of issuing a licence to his own parishioners, and giving him at the same time an opportunity of requiring the presence of both the parties and the compurgators.

94. Your Lordship would propose the entire abolition of marriage by banns?——I should not propose the entire abolition of banns, because I think there are some persons to whose religious feelings the abolition of marriage by banns at present would be a blow. I think the other system would to a great degree supplant it. In this case you must make a fresh

vision as to the fees: you must make the principal fee payable upon the granting of the licence, and a very small fee upon the actual performance of the marriage; because otherwise you would be doing a very unfair thing to the clergymen of populous parishes; and, therefore, I think the principal fee must be on the granting of the licence to the clergyman's own parishioners.

95. (*Lord Lyveden.*) Would you leave the entire discretion to the clergyman as to granting or not granting the licence?——I should leave it to him with very much the same rules as now apply to the surrogates.

96. (*Dr. Twiss.*) Would it meet your view if every clergyman was a surrogate?——In fact, what I propose would be to make them surrogates.

97. The principle would be rather different; there would be a certain check on the clergyman?——Yes, which I think desirable. I could enter into details if necessary, but that is what I meant. I think that the present law of banns should be altered in a like manner. I mean that before the banns are put up the two parties should appear and that there should be compurgators. It is not possible for a person who has not, as I have for five years, had to grapple with it, to conceive the amount of difficulty there is in the way of a clergyman who wishes to do his duty in this respect. For instance, in the parish I referred to I had 14,000 souls under my charge. Persons appeared before me and had their banns put up. They said they resided at such a place. They had only to pay half-a-crown to the owner of the house, and when I sent my messenger or clerk to inquire whether they were there, the answer was they were. It was only by great extra labour and vigilance that the marriage of non-parishioners and minors and those within the prohibited degrees could be prevented. The difficulty is very great as the law now is. I may mention one case to show what I mean. I was a surrogate myself as well as a parish priest. Two persons once appeared before me and applied for a licence to be married—a sailor and a young woman. I had received a letter that morning from a woman who stated that she was the mother of the young man, and that the young woman was already married to another sailor who was at that time at sea, and therefore she begged I would not issue a licence for them to be married in my church. When they appeared I cross-examined them both very closely. They both denied it. I told them the charge had been made. The young woman, with the greatest apparent simplicity, said, "I have "no doubt I know who it is. The mother of my "young man dislikes the marriage, and I have no "doubt she has written to you and trumped up this "to prevent the marriage; but the truth is, it is my "next sister who is married to this man. I am not "married myself." Well," I said, "I must inquire; "I cannot issue the licence now;" but the answer was, "My young man is going to sail the day "after to-morrow for three years. He only wants to "be married so as to make over to me his 'marriage "'lines,' and therefore it is a very hard case if I am "to be deprived of these for three years." I said, "It "would be hard, and I will therefore make great ex-"pedition and inquire about it. You may come again "to-morrow." The place was 16 miles off. I said, "I "will send a person rather than issue a wrong licence, "but I shall certainly do it; so you need not come to-"morrow if it is a wrong case, because I shall find it "out." I sent, and found it was undoubtedly true that she was already married to another sailor, and was at that time receiving his money, and that the young man to whom she was going to be married knew it. The next day they appeared for the licence. When I produced the proof of her marriage she hung her head down, but the young man who was going away the next day immediately said, "Never mind, "my girl, we will go over to ———; they are not "so strict there. We will get married there." Now this case shows the watchfulness that is needed, and that some fresh provisions are required: either the old system of compurgators or the like, because you cannot expect every surrogate to take that amount of trouble. That something is necessary to prevent the recurrence, as at present, of these marriages I am convinced. I myself see no better plan than that which I have suggested, and I think it is worth trying.

98. (*Lord Chelmsford.*) Does your Lordship think that marriages of this improper description are frequent?——Far from infrequent. In my diocese we have instances every year, such as an uncle marrying his niece, a widower marrying the sister of his late wife, and the like, through the present facility of escaping notice.

99. The publication of banns is hardly a check on marriages of this description, especially in populous places?——It is scarcely any at all.

100. (*Dr. Twiss.*) Of course all these marriages of which your Lordship speaks would be void marriages?——They are void; but still the evil remains, and a great evil it is. Another great evil is the present extreme difficulty of punishing the parties who take a false oath. It is nobody's business to prosecute; and moreover I need not tell your Lordships that you cannot indict the parties taking a false oath for perjury. You can proceed against him for the misdemeanor, but it is nobody's business to do so. The consequence is, that false oaths are taken with perfect impunity. You cannot expect the chancellor of the diocese who issues the licence to prosecute in these cases, when there is no duty laid upon him to do so.

101. (*Lord Chelmsford.*) As I understand your Lordship's suggestion is, that these licences should only be granted in the parish where one of the parties has resided?——Yes.

102. What would you do with regard to the other, the non-resident parishioner, where there is one resident and the other non-resident wishing to marry in the parish of the intended husband?——I should require the certificate of the clergyman of the other parish.

103. (*Lord Lyveden.*) How would you secure the proper inquiries being made by the clergyman? For instance, in the case you quoted, I suppose your getting this letter was purely accidental. If you had not got it you would not have thought of inquiring?——I always did inquire.

104. Suppose they came before the clergyman; according to your proposal would there be anybody present?——In the first place I would make the clergyman absolutely responsible for all reasonable care; in the second place I would require the presence of compurgators; and next the attendance of both parties, if they were of the same parish, together, so that there would be the opportunity of examining one in the presence of the other. Lord Chelmsford suggested that one might be at a distance. That difficulty might be met by requiring the certificate of the second clergyman. It is not the question whether this is absolutely the best system, but whether it would not be an improvement on the present system.

105. (*Lord Chelmsford.*) It would be quite impossible to prevent those frauds which you have suggested by any precautions?——Impossible, I fear, to prevent them wholly, though a great deal might be done.

106. Your Lordship proposes to get rid of banns in rather an indirect way, by inducing persons to apply for licences?——Yes. You will have other difficulties if you abolish banns, because banns involve church authority. Some persons have a religious attachment to banns.

107. (*Dr. Twiss.*) In fact your Lordship's plan would perhaps rather make it the interest of the clergyman to recommend the licence than the banns?——I do not think it would affect the interests of the clergyman.

108. With regard to the fees?——It would not make much difference, because I was proposing a similar general expense to the present, only it would prevent his losing his fee by sending his parishioners to another parish.

Bishop of Oxford.

21 Feb. 1866.

109. (*Lord Chelmsford.*) There is no fee upon the publication of banns, is there?——There is a small fee.

110. I thought that was to the clerk?——I think in some parishes there is a small fee for the clergyman too. Another gain would be to equalize fees as much as possible by a general authority, so that they should be the same everywhere. I think the notion that marriages are performed cheaper at some places than at others facilitates the crowding into one place, and in that way the covering of bad marriages.

111. A great object appears to me to prevent improper marriage of minors and those illegal marriages to which your Lordship has alluded. With regard to the marriage of adults, where there is no objection whatever to their marriage, you would not want to guard against them?——Very true. If you can remove the objections which persons feel to being married at home from lawful motives, you have then, as it seems to me, taken away the shelter they give to the bad.

112. By "at home" you mean in their own parishes?——Yes; and there is a general objection amongst the lower orders to being married in their own parishes. There is a great objection to their banns being published. The common people seldom attend the church when their banns are published. They are afraid of being laughed at.

113. Do you think there is any very great harm in that if they are adults and persons to whom there is no objection?——No; but it marks the tendency when there is no wrong reason for wishing to be married out of the parish. It marks the general prevalence of such a wish, because they like to escape that. They would escape that by the licence system.

114. As you say that furnishes a sort of cover to those who wish to marry improperly?——Yes. I think there is another and quite a separate point, which I dare say has been brought before the Commissioners, which in my judgment is objectionable, the allowing the course of the marriages between the registrar's office and the church to be mixed. I mean allowing banns to be published at the registrar's office, and then the registrar's licence to be a ground for marriage in church. I think if parties begin with one they should go on with it; I think the present rule concerning the publication of banns at the registrar's office most objectionable. Banns used, as the Commissioners are aware, to be read at the meeting of guardians, and the consequence was that some guardian or another probably knew something of the parties. Now the notice is hung up in one of the rooms in the registrar's office, sometimes an almost unvisited room, and even if it be visited, guardians have something else to do than to read such notices. The consequence is, that as a publication the present plan is a mere delusion in most cases. I myself knew instances of the change facilitating void marriages being celebrated, where I spoke to the guardian about it, and asked why he did not stop it. He said, "I "would have stopped it directly if the banns had been "read, but I did not think of going to look and see "who was going to be married."

115. (*Lord Lyveden.*) How was that change made?——I presume by Act of Parliament.

116. (*Lord Chelmsford.*) Might not this course be adopted, that the registrar should grant licences and guard the application in the same way that your Lordship has guarded it with regard to the application to the clergyman, so that there should be compurgators, that the parties should appear just in the same way and prove that they were persons who might legally be married?——Undoubtedly, but it would not be at all the same safeguard, because the safeguard in the case of the clergyman is that he probably pretty well knows the friends and relations of the young people, whereas the registrar knows nothing at all about them. He is the general officer of a wide district, and he has neither the same means nor the same interest for detecting fraud as the clergyman has, because the clergyman is as it were responsible. If a minor in his parish contracts one of these marriages, and the clergyman showed any sort of carelessness about it, he knows perfectly well that he makes the friends of those people enemies for life. The registrar has neither these influences nor the same means of detecting fraud, therefore I do not think he could grant licences with the same security that the clergyman could.

117. Would it not be better in your Lordship's judgment than the present system?——Yes; I think almost anything would be better than the present system. I still should object to the mingling of the two.

118. Where it begins, there it should go on and be concluded?——Yes.

119. Does it frequently happen that where the notices have been given in the registrar's office the marriage takes place in the church?——I do not think it is very frequent, but it is not unfrequent. Many clergymen use their influence from good and religious motives to induce people to come to the church. They feel how much they lose in losing the blessing of the church and being married by civil contract, and they therefore do all they can to get the people to come to church, and often succeed.

120. I do not know whether your Lordship is aware of the extraordinarily small proportion of marriages that take place in the registrar's office?——Yes. There is with many a religious objection to being married in that way. With others there is a feeling that there is some disgrace in it, that it is being married like a pauper.

121. Do you not think that there is a more general inclination to be married in church and to have a religious ceremony?——I think there is a very strong feeling of that sort.

122. (*Lord Lyveden.*) I wish to ask whether in the parish you spoke of you had many cases of objection where banns were published in church?——I only remember that occurring once.

123. (*Lord Chelmsford.*) Was that a well-founded objection?——I am not sure. I think it was. I think the parents objected.

Wednesday, 28th February 1866.

PRESENT:

THE RIGHT HON. THE LORD CHELMSFORD.	THE ATTORNEY GENERAL.
THE RIGHT HON. THE LORD LYVEDEN.	TRAVERS TWISS, ESQ., Q.C., D.C.L.
THE RIGHT HON. THE LORD NAAS.	ALEXANDER MURRAY DUNLOP, ESQ., M.P.

LORD CHELMSFORD IN THE CHAIR.

J. Anderson, Esq., Q.C.

28 Feb. 1866.

JAMES ANDERSON, Esq., Q.C., examined.

124. (*Lord Chelmsford.*) We know that you have had great experience in Scotch Law, and no doubt you have frequently turned your attention to the Scotch Law of Marriage?——I have had occasion to do so.

125. We have before us a *précis* of the constitution and proof of marriage by the Law of Scotland, furnished to us by Professor Moir, and therefore we are perfectly cognizant of the constitution of marriage in Scotland. There are two modes of contracting marriage, a regular and an irregular marriage. The regular marriage of course everyone understands to be

by the publication of banns, and by a ceremony performed by a minister. With regard to irregular marriages, there is the marriage by consent *per verba de presenti*, there is the marriage by promise, *per verba de futuro subsequente copulâ*, and there is a third which does not constitute a marriage, but is evidence of marriage, viz., by habit and repute. Those irregular marriages are at the present time an offence against the Law of Scotland?——Yes, the law considers all marriages, not celebrated by a minister, or person in holy orders, after due proclamation of banns, to be clandestine. Baron Hume, in his Treatise on Crimes (vol. I. p. 463), a work of high authority, says "our 'practice bestows on *all* marriages of this description 'the name of clandestine and irregular, and holds 'none for right or inoffensive, but that which is 'celebrated by a priest duly ordained by the church, 'and after proclamation of banns." The marriage is however valid, but the parties, the witnesses, and celebrator are liable to penalties, which as specified in the Acts, 1661, c. 34, and 1698, c. 6, were heavy. The former of these statutes enacts that the parties themselves should be imprisoned for three months, and pay fines according to their rank. At the same time, I have to remark, that I never heard of a real prosecution of the parties, where there had been merely the interchange of matrimonial consent, without any ceremonial being observed, or any act, or pretended act, of celebration, and I doubt very much whether the penalties of the statutes could be exacted in such a case if resisted.

126. Formerly, I believe, there was a mode adopted of obtaining the registration of a marriage, of getting some friend to go before a justice of the peace, and to lay a complaint of this irregular marriage, whereupon the parties were fined, and an entry of that was made, which furnished a registration of the marriage. What we particularly want to know is with regard to the irregular marriages—as to their operation and effect?——These proceedings before the justices, and which were also frequently had before the burgh courts, especially in Glasgow and the west of Scotland, were founded on the Acts against clandestine marriage to which I have referred, and particularly on the Act 1661, c. 34; and these Acts, which were passed for the purpose of repressing the evil of clandestine marriage, were thus made the instruments of extending it. Parties, who were desirous of contracting an irregular marriage, appeared before the magistrate of a burgh, or a justice of the peace, who pronounced, on the confession of the parties, a sentence finding that they had contracted a clandestine marriage, and imposing a fine, which was merely nominal. An extract of this sentence, from the Court books, was delivered to the parties, and regarded by them as their marriage certificate.

127. (*Mr. Dunlop.*) Was there no form of complaint by the procurator fiscal, or some officer?——Yes; the procurator fiscal was put in motion by the parties or by some friend on their behalf. The proceedings assumed the form of a petition or complaint at the instance of the procurator fiscal, which set forth that the persons complained of had contravened the statutes against clandestine marriages, or "had obtained 'themselves married without proclamation of banns, 'and not agreeably to the regulations of the Church," and prayed for fine or imprisonment. The charge was admitted by the parties, and on their confession the sentence proceeded. Although the minimum punishment recognized by the statute was three months imprisonment, and a fine of 100 merks Scots (5*l.* 11*s.* 1½*d.* sterling), or, where the party was unable to pay, a substituted punishment, "with stocks and irons," yet there was generally imposed only a nominal fine, such as 5*s.*, or if a fine of 100 merks was imposed, it was afterwards moderated to this amount, and the statutory sanction of imprisonment, was evaded by some such reservation as this in the sentence, "reserving to consider how far "they (the parties) ought to be imprisoned." It is needless to say that these reservations never were, and never were intended to be, considered. The object of the parties, however, was attained. The law gave effect to these sentences as good evidence of the marriage between the parties.

J. Anderson, Esq., Q.C.

28 Feb. 1866.

From disclosures in a modern case of declarator of marriage, Hamilton *v.* Wyllie, in 1827, (5 S. & D. 716), it appeared, that, in the Glasgow burgh court, the petitions in name of the fiscal, the confessions of the parties, and the sentences of the court, were kept in printed forms ready for immediate use, and all that was done when the parties came before the court, was to insert in the printed forms their names, and obtain their signatures to the printed declaration or confession whereupon the extract of the sentence, likewise printed and ready to be filled up, was delivered to them.

In the great majority of the cases, the parties had not previously contracted any marriage, and the forms used, made them confess or state what was untrue. They went before the magistrate in order to get married, and hence what took place came to be described as "a marriage before a magistrate or a justice "of the peace." It was so treated in text books on criminal law, as well as spoken of in popular language. Baron Hume (vol. I. p. 464), thus speaks of these marriages: "Sometimes a couple go into the presence of a "magistrate, and *there* exchange the matrimonial con- "sent; and in this there does not seem to be anything "unlawful on the part of the *magistrate*, who does not "pretend to celebrate the ceremony of marriage, but "serves as a reputable witness only of the act and "civil contract of the parties."

Encouragement was given to these proceedings by magistrates and justices or their functionaries, prompted, it may be, in some instances, by the fines and fees which were levied. These abuses led to a prosecution before the Court of Justiciary of George Lyon, one of the baillies of Inverury, in 1812. The indictment was laid both on the common law, and on the Act 1661, c. 34, for the crime of celebrating clandestine marriage, and also that of fraudulently, and for gain and emolument, assuming or exercising, the character of one of His Majesty's justices of peace, or of a magistrate of a royal burgh, and in both, or either, of these characters, using or sanctioning, a fictitious form or pretence of judicial procedure, for the purpose of celebrating, or effecting, a clandestine and irregular marriage, and of creating or preserving evidence of such marriage. In the minor proposition of the indictment it was stated that the course Lyon had taken was "to "prepare petitions to himself, as at the instance of the "fiscal of the burgh, concluding for the statutory "penalties against individuals as irregularly married, "and refusing to disclose the names of the celebrator "and witnesses. The parties appeared on service of "these, and acknowledged the charge, whereupon "decree passed for a fine of 100 merks, which was "afterwards reduced to 5*s.*" The whole procedure was charged as the sole invention and device of the panel. After a discussion on the relevancy of the indictment the public prosecutor abandoned the charge, and the practice continued as before. It was very common before the justices of peace for Lanarkshire.

128. Was it not so in the small burgh of Rutherglen, so that it came to be a term a "Ruglen marriage"?——Yes.

129. (*Lord Chelmsford.*) It was generally the act of the offending parties to put the law in motion for the purpose of obtaining registration of the marriage?——Generally it was; the object of the parties, however, was not strictly to obtain registration, but to be married, and to obtain authentic evidence of their being so, which they might preserve. They might, previous to the Registration Acts, if they thought proper, register the marriage, though irregular, in the parish records; and by the 48th section of the 17 & 18 Vict. c. 80, it was declared to be lawful for the parties, and they were "required," to register the conviction, in the register of marriages. The 49th section likewise directed the magistrate or clerk of court in which the conviction took place, to intimate to the registrar of marriages by notice in the form in a schedule (K) annexed to the Act that such

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conviction had taken place. The validity of the marriage, however, was not affected by the omission to comply with these provisions. In this way there may be said to have been registration of the marriage, but this was not the primary motive of the parties, in going before the magistrate.

130. At present there is no other way, is there, of obtaining any evidence of the irregular marriage except by witnesses who happened to be present at the time?——The evidence is very much a proof at large. It may consist of the testimony of witnesses present at the time, or of the acknowledgments, or conduct, of the parties. There is no register of irregular marriages, nor any provision for registering them, unless where there has been a decree of declarator of marriage, or fixing the status, a conviction by a magistrate or justice, or a warrant of the sheriff under the 19 & 20 Vict. c. 96 (1856), known as Lord Brougham's Act. By the first section of this Act it is enacted that irregular marriages should be invalid unless one of the parties had been previously resident in Scotland for at least 21 days, or had his usual place of residence there; and the second section made it competent for the parties, within three months, jointly to apply for, and obtain from the sheriff, a warrant to the registrar of the parish, or burgh, in which the marriage was contracted, to enter such marriage, in the register of marriages, kept by him under the Registration Act, 17 & 18 Vict. c. 80. Before this warrant could be granted, it was necessary to establish, to the satisfaction of the Sheriff, the fact of marriage, and the residence for 21 days. A certified copy of this entry is declared by this section to be evidence of the marriage, and of the 21 days residence, "in all courts in the United "Kingdom and dominions thereunto belonging."

131. (*Mr. Dunlop.*) Under the Registration Acts is it not competent to register all irregular marriages by the people coming before the registrar?——I do not know that it is. The Registration Act, 17 & 18 Vict. c. 80. ss. 48 and 49, provides for the registration of marriages established by decree of declarator, and of marriages for which convictions have been obtained before a justice of the peace, or magistrate, and the 3rd section of the Act 19 & 20 Vict. c. 96., provides that there should be no conviction for an irregular marriage, nor any registration of such conviction unless it proceeded upon proof, other than the acknowledgment of the parties, that one of them had his or her usual place of residence in Scotland, or had lived there for 21 days. In the old parish registers it was competent, before the Registration Acts were passed, to register irregular marriages. But I am not aware of any statutory authority for now registering irregular marriages excepting what I have mentioned, viz.: where there has been a decree of declarator, a conviction, or a sheriff's warrant.

132. (*Lord Chelmsford.*) According to your recollection of the Act of 1856, it is not compulsory upon the parties to register, but it is at their option?——It is not compulsory. The Act is permissive. The parties have the option to register within three months, and the omission to register does not affect the validity of the marriage.

133. Do you not consider that it would be a very desirable thing, in cases of irregular marriages, that a registration of them should be enforced before they could be valid?——My opinion is that in these cases registration should be made imperative. I think that if parties desire that they should be married, not in the regular way, by a clergyman, after proclamation of banns, it should be incumbent on them to have their marriage, which in that case would be irregular, registered. The principle of the law would not thereby be interfered with, that marriage was a contract constituted by consent. For the matrimonial consent would be expressed by the parties before the registrar, on the occasion of the registration.

134. (*Mr. Dunlop.*) Have you known cases where marriage either took place, or where it was on the eve of taking place, in which a prior irregular marriage was discovered of which there could have been no proof?——I have known several cases of that kind, where irregular marriages were discovered, or were set up and asserted, after one of the parties had been regularly married in *facie ecclesiæ*. In these cases two women were in effect competing for one man, or two men (though this was more rare) for one woman. Longworth *v.* Yelverton (4 Macq. p. 743) was a case of the former kind. There was there a regular marriage between Major Yelverton and Mrs. Forbes, and it was alleged by Miss Longworth that there had been a previous private marriage, between her and the Major, which private marriage was said to have been constituted, or to be proveable, by all the modes known to the law of Scotland for constituting or proving irregular marriages.

135. There could have been no public means of ascertaining the existence of that marriage?——Certainly not.

136. (*Lord Chelmsford.*) In that case, if I recollect rightly, there was no proof of the supposed consent *per verba de presenti*. The only evidence was that of the landlady of the house, who passing the room one day heard Major Yelverton reading something in a solemn tone to Miss Longworth, Miss Longworth having asserted that he was in fact reading the marriage service, but there was no other proof of it?——If I might venture to say so, I thought not, but there was a difference of opinion in the House; the then Lord Chancellor took another view of the evidence; his Lordship thought there was some confirmation of Miss Longworth's account of this reading, to be got from the correspondence.

137. On the contrary, I thought that the subsequent correspondence proved, as strongly as possible, that there had been no marriage. We undoubtedly took different views of that correspondence?——That is one of the unhappy consequences of the present unsatisfactory state of the law: the parties themselves may not know whether they are married or not; and when they appeal to a judicial tribunal, opposite and conflicting views are taken, on the question of their status, by the judges. There is no certainty of decision, and this appears to me to be a great misfortune. A law without certainty cannot be either just or expedient.

138. What do you think of a marriage by promise and subsequent *copula;* do you think that is a sort of marriage which ought to be?——No, I do not. But if registration were, as I think it ought to be, made imperative in the case of an irregular marriage, mere promise *subsequente copula* would of course be no marriage.

139. Unless it were registered afterwards?——No; the registration should have no relation back. It would itself imply, and be evidence of, the matrimonial consent. As the law now stands, it is scarcely correct to say that promise and subsequent *copula* constitute a marriage. They are rather regarded as evidence of it, and, in this respect, are placed on the same footing as cohabitation with habit and repute. The law indeed presumes that there is a *de præsenti* consent to marry, on the occasion of the *copula*, and *primâ facie* this presumption holds from the occurrence of the *copula*, but it may be rebutted. It may be shown that the *copula* was disconnected from, or did not follow on the faith of, the promise; or there may be other circumstances from which an inference opposed to a *de præsenti* consent to marry may be legitimately drawn. Were registration made imperative, it would be unerring proof that the parties had consented to be husband and wife. For this purpose, it would be immaterial whether the registration had, or had not, been preceded by a pre-contract *per verba de præsenti*, or *per verba de futuro subsequente copula*. There would be no longer the theory of a presumed marriage on the occasion of *copula* following a promise. This presumption would be displaced entirely. And I think it would be well got rid of. It is a fiction at best, and generally is opposed to the fact, in the case at least of one of the parties.

140. But, in a moral point of view, do you think it

desirable to constitute a marriage under these circumstances?——I do not. I think the law which holds a marriage to be established by promise *subsequente copula* has a tendency to encourage vice and immorality. It has been sometimes defended on the ground that it tends to make parties more circumspect. I doubt if this is correct. It may make them more wary and more crafty, the man if he has a design to seduce the woman, the woman if her object be to ensnare the man. Promises may be given to induce the woman to yield her person; or, expedients may be used to entrap the man into marriage. This cannot be desirable for society in a moral point of view.

I have always thought that the oft quoted passage in Lord Stowell's celebrated judgment in the Dalrymple case, was more distinguished for the grace of its diction, than for the truth or propriety of its moral sentiment. He says of these irregular marriages in Scotland: "The woman carries her virgin 'honours to the private nuptial bed, with as much 'purity of mind and of person, with as little violation of delicacy, and with as little loss of reputation, 'as if the matter was graced with all the sanctities 'of religion. It is in vain to talk of criminality, 'and of grossness, and of gross ideas. In such a 'case there are no other ideas excited than such as 'belong to matrimonial intercourse. It is the bed 'undefiled according to the *notions of that* '*country*; it is the actual ceremony, as well as the 'substance of the marriage; it is the conversion of 'the lover into the husband, *transit in matrimonium*, 'if it was not *matrimonium* before." This pleasing picture is not drawn from real life, if I may presume to say so. I do not think that there is any such respect or favour felt in Scotland for these irregular marriages. On the contrary, I believe that they are generally stigmatized and condemned in public opinion, and, as I have already said, are regarded as an offence in law.

141. It would abolish altogether that particular mode of constituting marriage, if you required previous registration?——Yes. The registration would differ from the registration under the Act of 1856, which may be made within three months after the marriage. But this is merely with the view of preservation of the evidence, if the parties desire it.

142. (*Mr. Dunlop.*) And therefore registration, strictly so called, would properly enough follow the *copula*, and then the registration would be subsequent. It could not well take place before. It would be marriage itself, if it was of any avail at all?——I think that what took place before the registrar should be marriage itself, and it would be *this* marriage that would be registered, not any implied marriage by promise *subsequente copula*. That appears to me to be the right footing on which the registration should be placed.

143. (*Lord Chelmsford.*) Registration is a record of an act, and therefore the act must have been performed before registration?——That is the primary idea of registration, and it would not be departed from. The consent to marry each other would be given by the parties before the registrar, and would immediately precede the act of registration, over which the parties would have no control. It would be the imperative duty of the registrar to make it, under his responsibility, as a public officer.

144. (*Mr. Dunlop.*) Do you think it possible to make a distinction between the binding ties between the two parties, and the effect of such a marriage not registered or published as between other parties, such as the second wife, or future children by another marriage?——I think it ought to be very matrimony, *ipsum matrimonium* as the civilians call it, or altogether invalid. It might lead to very anomalous results if a distinction were made. I do not see my way to the marriage being held good as to the "second wife" and not good as to the man whose *wife* she is thus assumed to be. There is indeed much to be said for the legitimacy of the issue of a second marriage, where either or both the parents *bonâ fide* believed they were lawfully married. But such cases must be of rare occurrence; and, on the other hand, it is to be considered that mischievous consequences may result to third persons whose interests and happiness are involved in maintaining the validity of a first marriage; so that, all matters considered, I think it would be better for the harmony of society, that every marriage should be valid or invalid through all its consequences. There would be less social derangement.

145. (*Lord Chelmsford.*) The marriage must either be a valid marriage at the time, and for ever after, or a bad marriage?——Yes; I think it ought to be so.

146. (*Lord Lyveden.*) What is the species of registration that you would recommend?——There are registers of marriages at present in every parish and town in Scotland, and registration in them I think would be sufficient. As the law now exists, registration of regular marriages is not necessary to their validity; the neglect to register merely exposes the parties to penalties.

147. In these irregular marriages, would you think it sufficient that the parties themselves should volunteer to register without any witnesses?——That would be matter of detail for regulation. There might be one or two witnesses required. But I think it ought to be deemed sufficient if the parties themselves consented to be married, in presence of the registrar. The registration would thereupon be made, by the registrar, before the parties quitted his presence. It would be authentic evidence of such present marriage, and an extract as conclusive of its sufficiency and validity, as the extract of a decree, or as the extract from the register of sasines is of the validity of a right to land. But I should hesitate to say that the mere voluntary acknowledgment of the parties *ex post facto*, not on the occasion of the marriage, would be sufficient, because a marriage might be registered as of a date when there really was no marriage at all, and this might have prejudicial effects upon third parties.

148. (*The Attorney General.*) If I rightly understand your meaning it is this, you would say that for civil purposes it should not be deemed a marriage until it was registered?——Yes; that is very much the view I take. I think that for no purpose, civil or ecclesiastical, should there be deemed to be a marriage until registration, as I have described it, where the regular ceremony was not observed.

149. (*Lord Chelmsford.*) You are of course aware that in England there are no irregular marriages; there is either the marriage by the religious ceremony, or the marriage before the registrar. Do you see any objection whatever to turning all the irregular marriages in Scotland, into marriages before the registrar?——I think it would be desirable to do so. In my opinion there would be greater safety, and more simplicity, in that course, than in dealing with registration as the record of some past independent act. Different views, however, are entertained on this subject; but whatever principle be adopted, at all events registration should be established in order that it might be ascertained, with certainty, that a marriage had really taken place. Besides registration some preliminary notice of the intention to marry should be given, either by publication of banns, or by a notification by the registrar, or a civil magistrate as in France, in order that an opportunity might be afforded for any objections being stated to the celebration, or completion of the marriage. In my opinion, any amendment, on the law as to irregular marriages, should embrace both these objects, publication of banns, or some other notice of the intention to marry, and registration of the marriage itself when, it occurs. But those who are partial to the present system of irregular marriages might be propitiated, and their scruples removed, if only one of these measures, viz., registration, or marriage before the registrar, should in the meantime be introduced.

150. (*The Attorney General.*) May I ask whether the distinction between a regular and an irregular

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marriage need be at all maintained if there is a proper system of registration set up,—I mean in the language of the law?——It would still be a clandestine marriage if the banns were not published.

151. Supposing it should not be thought necessary as a general rule to introduce any such publication of banns, ought not the law of clandestine marriage in that respect to be abolished; I mean ought we not to consider whether or no a certain previous publication should in all instances be required for marriage? Supposing we do not think that necessary, why should the distinction of clandestine marriages and others be maintained?——Although it should be considered that no previous publication should be necessary to the validity of a marriage, I still think it expedient that publication should be required as matter of good order, and enforced by penalties. The consent of parents or guardians was by Lord Hardwicke's Act essential to the validity of marriage in England when the marriage was a marriage by licence; but though the law was altered, and the want of consent made not to affect the validity of the marriage after it was solemnized, consent of parents and guardians is still required in England by the present Marriage Acts, as well where there is the religious ceremony, 4 G. 4. cap. 76. ss. 16, 17, as where the marriage is before the registrar, 6 & 7 W. 4. c. 85. s. 10, 11, 12.

152. Does it not rather depend upon whether the law does or does not require in a directory sense some preliminaries?——Directory, certainly, and I think that publication of banns or some equivalent notification, if not made imperative, should be made directory, as publication of banns now is. If the direction were not followed the marriage should be considered irregular.

153. If the law introduces such a direction as a preliminary, of course the marriage is in a sense irregular without it, but in Scotland the law introduces no such direction. It is the ecclesiastical law, is it not?——Introduced by the ecclesiastical, but adopted by the civil law.

154. When you speak of registering after the event, I apprehend in Scotland the effect of registry at any time, as far as legitimacy is concerned, would be to put all the children on a level, whenever born?——Yes, if there was no mid impediment.

155. So that in truth, by saying that the registration should be at the time of the marriage, you do not mean more than this, that, for civil purposes, the marriage should not be recognized until registered?——It should not be recognized, qua marriage, for any purpose; and registration might be made essential in the case of an irregular marriage, without interfering with the doctrine of legitimation *per subsequens matrimonium*, if it were thought desirable to retain that doctrine.

156. Would it be necessary, in any legislation intended to introduce registration as a condition of legal validity, to interfere with the language and habits of thought of the Scotch people, as to a marriage being constituted by consent in the present way; would it not be consistent to say that no marriage should take effect for civil purposes until it be registered in a certain manner?——I would not so qualify it. It would be better, in my opinion, to say that, except in cases of regular marriage, there should be no valid marriage constituted without registration, that is, without the consent to marry expressed before the registrar and the recording thereof, otherwise something like a morganatic marriage, or connexion, would be countenanced.

157. (*Mr. Dunlop.*) Do you think there would be any greater repugnance in Scotland to people going before a registrar and there acknowledging the marriage, which should be instantly recorded, than going before a baillie or a justice of the peace?——I do not think there would be any repugnance at all. The frequency of the proceedings, in former times, before the baillies and the justices, would rather lead to the opposite conclusion.

158. (*The Attorney General.*) Do you think it would facilitate the matter if it were arranged, for the purpose of this registration, that every officiating minister of every church and every religious denomination, whether church or chapel, should be a registrar?——Such a provision is not required in Scotland. Since the Act of Uniformity, 10 Anne, c. 7., all episcopal clergymen may celebrate marriages.

159. That is not what I meant. It occurred to me that there might be persons in Scotland who would have an objection to going before a civil registrar for the purpose of an act which is necessary to the constitution of marriage. If the law made every officiating minister of religion, whether in a church or chapel, a registrar for that purpose, would that facilitate it?——I think the law in effect does so already. I mentioned the episcopal clergy, and I was going to add that by an Act in the reign of William the Fourth, 4 & 5 W. 4. c. 28., the right of celebrating marriages was extended to any person, in holy orders, of whatever communion he might be; after proclamation of banns any clergyman in Scotland may celebrate marriage, and the marriage would be regular.

160. I do not think you quite follow my meaning, which was this,—to avoid the necessity of going before some lay registrar in order to complete the marriage, would it, or would it not, in your judgment, be a good thing that the law should say that every person who could solemnize a marriage, in a church or chapel, should for that purpose be a registrar, and that there should be a registration kept at the church, which should operate as the registration under the Act?——That is matter of detail. It might perhaps facilitate the system, if all persons who could solemnize regular marriages, were appointed registrars. But I scarcely think this necessary. For, if the parties had a scruple to go before a lay registrar, why should they not be married in the regular way. In Scotland regular marriages may be celebrated at any place, and at any hour of the day or night. They seldom take place in a church or chapel, unless the parties belong to the episcopal denomination. The minister keeps a record of the marriages he celebrates for that purpose.

161. We have not got any such registration as a condition of marriage?——You do not require any, as the law now stands.

162. You mean this, that there is an existing registration which may be simply adapted for that purpose?——Yes, it may be enacted that no irregular marriage should be valid and effectual unless the parties interchanged the matrimonial consent before a registrar, whose duty it would be thereupon to record the marriage.

163. (*Mr. Dunlop.*) Every minister celebrating a marriage, whether of the establishment or not, keeps a register?——Yes, I believe this is generally done.

164. But besides that he sends a certificate to the proper parish registrar?——He delivers a certificate to the parties in order that they may transmit it to the registrar, and if they fail within a limited time to do so they are liable in penalties under the Registration Acts.

165. (*The Attorney General.*) In fact there is an existing machinery of what I may describe as ecclesiastical registration in Scotland which may be simply adopted as it stands for that purpose?——I think it may well be adapted so as to include a register of marriages before the registrar, of marriages which would now be deemed irregular.

166. A question was put, as I understand it, whether in some cases you might not say an unacknowledged marriage shall be void when it would operate to the prejudice of the third party who had subsequently contracted marriage without knowledge of the first. That I understand was the distinction suggested. Does it not appear to you that that would necessarily operate unjustly against the other person who was not a party to the second contract, for instance, if it was a husband who made the second marriage, would it not be contrary to principle, if the first was a marriage in law, to take away from the wife the benefit of it, because the husband had married another person?——I think so. If the first was a marriage in law, the husband could not validly marry another person, and she would not be his lawful wife, although, according

to the Canon law, if there was *bona fides* on her part, her children would be legitimate. Whether they would be so by the law of Scotland is doubtful. In Riddell *v.* Brymer, in 1811, the question arose, where the man married a woman who was the wife of another man, but whom he *bonâ fide* believed to be unmarried. The judges were equally divided, three to three. The child died, and no further step was taken in the cause.

167. May I ask you whether you are aware that there was an order made by the House of Lords in the last century, or rather more than a century ago, that the Court of Session should prepare a Bill for the prevention of clandestine marriages in Scotland?——I am aware of the order. It was made by the House in the year 1753, when Lord Hardwicke was Chancellor. About that period there occurred a number of cases in the courts of Scotland, and also some in the courts of England, which, in a remarkable degree, exhibited the mischievous consequences of irregular marriages in a moral point of view.

Among the Scotch cases, there was Forbes *v.* The Countess of Strathmore in 1750, in which the *man* was the pursuer of a declarator of marriage. He had been footman to the Countess of Strathmore, and he alleged that marriage had been contracted between him and the Countess, in various ways, and among others by promise *de futuro subsequente copula*. This ground of action failed him, but he was allowed a proof of cohabitation, and habit and repute. The case does not appear afterwards to have come before the court for judgment on the proof, but the marriage was recognized, the Countess apparently having abandoned her resistance. *Elchies, voce* "Proof," No. 9.

In Pennycook *v.* Grinton and Graite, John Grinton was, during his life, claimed for a husband by two women, Ann Pennycook and Ann Graite, each of whom brought a declarator of marriage against him. It appeared that Grinton had promised marriage to Pennycook, and afterwards had a child by her. Some years after the birth of the child Grinton privately married Ann Graite, with whom he lived publicly as her husband. The Court of Session, by their judgment in December 1752, found "that Grinton had "contracted a valid marriage with Ann Pennycook by "the promise *subsequente copula*," and they also found Ann Graite's marriage proved, but "that it could not "compete with Ann Pennycook's prior marriage," which they accordingly declared, but they divorced Grinton for his adultery with Graite. Mor., 12677.

Another remarkable case was Kennedy *v.* Campbell, where, after the death of the man (Campbell of Carrick), two women came forward, each claiming to be his widow. Kennedy relied on a private marriage contracted on the 3rd July 1724, and Campbell on a marriage, also irregular, on the 9th December 1725. It appeared, however, that Kennedy had visited Carrick while he was living with the respondent Campbell, and had recognized her as Carrick's wife. The Court of Session, therefore, found that Kennedy had barred herself by personal exception from claiming to be Carrick's wife, but in the House of Lords this judgment was, in the year 1749, reversed, and the case was remitted with instructions to allow Kennedy a proof of her alleged prior marriage. Kennedy's evidence included a written *de presenti* declaration of marriage by Carrick, dated 3rd July 1724, and a great number of letters between her and Carrick, in which they corresponded with each other as husband and wife. But the House of Lords, on the 31st January 1753, affirming the judgment of the Court of Session, found that Kennedy had failed to prove her marriage. 1 Paton, 519. On the same day the House made the following order: "Ordered, that the judges do prepare and "bring in a Bill for the better preventing of clandestine "marriages." (28 Lords Journals, p. 14.)

This Order is in terms comprehensive enough to include Scotland as well as England, and as the immediate occasion of making it, was the discussion which had taken place in an appeal from Scotland, on a Scotch clandestine marriage, their Lordships probably intended that the Bill to be prepared, should include Scotland; and so it appears to have been considered at the time in Scotland. Lord Elchies, in his note of the case, says, "This judgment was affirmed in Parliament "either the 31st January, or 1st February 1753; and "I am told the English judges are ordered to prepare "and bring in a Bill to prevent these clandestine "marriages." But the English judges, to whom the reference was made by the House, confined the Bill to England. The draft of the Bill was shortly afterwards presented to the House by the Lord Chief Justice of the King's Bench, and during the same session of Parliament, it passed into a law, 26 Geo. II. c. 33.

As the Bill was limited to England, the House made another order, on the occasion of the second reading of the Bill, on the 17th April 1753, (28 Lords Journals, p. 98), in the following terms:—"That the Lords of "Session in Scotland do prepare a Bill for the more "effectual preventing clandestine marriages in that "part of the United Kingdom called Scotland, and "lay the same before this House in the beginning "of the next session of Parliament." The order of the House was laid before the Lords of Session, and their Lordships, on the 12th June 1753, appointed five of their number, "Lords Milton, Drummore, "Elchies, Tynwald, and Kames to take under their "consideration the above order of the House of "Peers, and to report their opinion." The draft of a Bill was prepared by this Committee. On the 24th January 1754 the Lords of Session approved of this draft, and directed it to be sent to the Lord Chancellor, to be laid before the House. It was accordingly laid on the table of the House on the 1st April 1754, but no other step appears to have been taken upon it, during that session of Parliament. In the following session, however, a Bill, which was described as having been drawn by the Lords of Session—probably the same draft which had been laid on the table in the previous session—was brought in. On the 23rd April 1755 it was read a first time, and ordered to be printed. Nothing further appears to have been done upon it—at least I can find no trace of any further procedure in the journals of the House. It would be interesting to know the terms of the Bill, as it may be thought to express, in some measure, the opinion of the Lords of Session, at that time, on clandestine marriages, and on the remedy for preventing them. The Bill would likely have been printed in pursuance of the order of the House, and it will be among the records of Parliament. I would infer from what is stated in Tytler's life of Lord Kames, one of the Committee of the Lords of Session who prepared the draft, and particularly from a correspondence therein referred to, which passed between him and the Lord Chancellor Hardwicke, that the Bill approximated to, if it did not follow, the English Act of June 1753.

Had an imperial measure, applicable to the United Kingdom, been brought in, in 1753, it is not likely that it would have met with more opposition in Scotland than in England, but the opportunity was lost, by confining the Bill to England, and the laws of the two countries were placed in a wider state of contrast. Any attempt to pass a separate measure for Scotland, after two sessions had elapsed, would be sure to stir up the feelings of national jealousy, which at that time ran very deep among the people of Scotland. Great aversion was entertained to English institutions, a strong repugnance to the adoption of any portion of English law. Sir William Wynne, in his judgment in Middleton *v.* Janverin (2 Hagg. Cons. 448), observes, with reference to Lord Hardwicke's Act,—"I am old enough to remember "the passing of that Act, and I recollect well that "there was an intention at the time of introducing "another Act of Parliament, which was to extend to "Scotland; but, by the Act of Union, the state of "religion is not to be touched, it is to remain exactly "as it was; and therefore there was a difficulty "arising out of the Act of Union in applying the "Marriage Act to that country."

168. Is it or is it not the law of Scotland at present

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that boys of 14 and girls of 12 may marry without the consent of guardians?——That is the law of Scotland. At these ages, the capacity of procreation is presumed, and this capacity is considered to be a reason for entitling the parties to marry. This view is sometimes justified on moral considerations, for it is said, that if parties capable of procreating could not marry, they would live in concubinage, or be induced to commit fornication. In the law of Scotland the presumption of physical incapacity below these ages is *juris et de jure*, and in such a case inquiry will not be made into the fact of capacity, but the marriage will be void, unless it should have been adopted after the age of puberty, as by continued cohabitation.

No consent of parents or guardians is required. If the parents should forbid the marriage, it would be simply a question of opportunity, and if what is held to constitute marriage was proved in fact, the marriage would be valid in law. In this respect, the civil law is not followed in Scotland; by that law, a father's consent was required to the validity of the marriage of his children, who were not emancipated.

169. Do you think it would be desirable that that state of the law should continue?——I do not. I think that persons of that early age should not have the power, without the consent of parents or guardians, of irrevocably entering into so important a contract.

170. Can you tell me whether you are aware of any other state or country in Europe, except Scotland, in which the constitution of marriage is left on the basis of the old canon law, unregulated by secular legislation?——No, I am not aware of any. The secular legislation of several of the most important countries of Europe has been specially directed to the subject of the age of parties, and to the necessity of consent, before marriage. In France, a man cannot marry before 18, nor a woman before 15, (*Code Civil*, § 144), although the Government may grant a dispensation upon weighty reasons (*motifs graves*) (*Ibid.* § 145), and even after these ages are passed, the consent of father and mother, or, if they differ in opinion, of the father, is necessary when a son has not attained the age of 25, or a daughter 21 (*Ibid.* § 148). In Spain, marriage of a man under 25, or a woman under 23, is prohibited, unless with the consent of parents or guardians; and by the law of Holland, the consent of parents to the marriage of sons under 25, and of daughters under 20 is necessary to its validity. (*Voet. lib.* 23, *tit.* 2, *de Ritu Nupt. n.* 11, 12). Even after these ages, the consent of parents is to be asked, and marriage cannot take place, if a valid ground of objection is stated by the parent to the satisfaction of a magistrate, before whom the parents are called by citation. (*Ibid. n.* 13).

171. So far as you are aware, Scotland stands quite alone in Europe, as to the state of its marriage law?——As far as I know, in Europe. In many of our colonies, however, and in some of the States of America, the canon law rule prevails, enabling boys at the age of 14, and girls at 12, to marry, without consent of parents or guardians.

172. (*Lord Chelmsford.*) I understood the question put by the Attorney General to be whether marriages are regulated by legislation in all other countries?——I believe that they are in all other European States; and I should not say that marriages are not regulated by legislation in Scotland; but the legislation does not go to the essence of the marriage,—to the valid constitution of the contract.

173. (*The Attorney General.*) As far as you know in other European states it does, and it provides in substance for registration?——Generally, the legislation in European states has for its object to regulate the essentials to marriage; but in some, regulations are introduced only as matter of order, even in the case as to the age, at which parties may marry. For example, by the Frederician code it is provided (pt. 1, b. 2, title 3, s. 3,) that it should not be allowable to consummate marriage before 14 years for women, and 16 for men, but it is provided that "in case younger "persons should publicly promise themselves, and "have carnal correspondence, the marriage shall, "indeed, be valid, but our will is that they be punished "arbitrarily, for having anticipated the time for the "consummation of their marriage." The legislation, among other matters, has had reference to the publication of intended marriages, and to the formalities in their celebration, including, as in France, the registration of the "act of marriage." (*Code Civil, sec.* 63, *et seq.*, and 165, *et seq.*) But I cannot say that registration is anywhere provided as essential, so that the omission to register would be fatal to the validity of the marriage. The omission, however, can scarcely ever occur, as registration is not placed within the direction of the parties, but is intrusted to a public functionary. That is the general impression I have of the legislation of other states of Europe.

174. As far as the public interest in the publicity of marriage is concerned, putting aside the private interests of families, would not the object be attained equally by publication after marriage?——So far as regards the preservation of evidence of the marriage, it would.

175. And so far as regards notice to other parties?——So far as regards that, it would not. The publication of a past act would not serve the purpose of an intimation or warning to the public of the parties' intention to contract marriage.

176. I mean to other parties who might afterwards be invited to contract marriage?——Of course it would be the same as to such parties as to the public generally, but there might be objections to a proposed marriage, arising from connexions already formed from other matrimonial entanglements. These render publication of banns, or some equivalent notice, or intimation, before marriage desirable.

177. Are you aware of cases that have occurred under the present law of Scotland, of this sort, where it has been the deliberate intention of the parties that they should not be understood to be husband and wife until one or the other of them was dead?——Yes; at least where it was so alleged. But when the Court was satisfied that this was the intention of both parties, it held that no marriage was contracted, as in Anderson *v.* Fullerton, 13th November 1795, Mor. 12,690, where a holograph letter, found among Fullerton's papers at his death, in which he declared himself to be the husband of Anderson, his housekeeper, who had long cohabited with him, and borne children to him, was found not to establish a marriage. There was, however, a minority of the judges who thought the marriage was sufficiently proved by the letter, but the majority were of opinion that "Mr. Fullerton "meant to do what the law cannot sanction. His "pride prevented him from making Jean Anderson "his wife, but he wished to bequeath to her the status "of his widow, with a view to legitimate the children. "While the letter, however, remained in his possession, "it was revocable, and was binding on neither party, "and therefore it does not signify whether its execu- "tion was, or was not, communicated to Anderson." Some subsequent cases of the same character as Anderson *v.* Fullerton have issued favourably for the woman, and serve to illustrate the unsatisfactory position in which the law now stands in this respect. I may mention Hoggan *v.* Craigie, Macl. & Rob., p. 942. There the man, who was a writer to the signet, gave the woman, by whom he had previously had a child, a letter, promising to leave her a declaration acknowledging her as his lawful wife, which would secure to her the annuity payable to the widow of a writer to the signet. The letter proceeded to state that the declaration would only be delivered at the writer's decease, in the event of secresy being observed, and would be of no avail if its contents were made public, or if the letter were used as a document against the writer. The intercourse between the parties continued after this letter, and a marriage was held to be established in a declarator of marriage by the woman, in the lifetime of the man, mainly upon the terms of this letter.

178. The object was to make a widow and not a wife?——That was the contention of the man. He stated that his object was to provide for the woman after his death by enabling her to get a pension as his widow, but that he did not intend to make her his wife. The Court of Session and the House of Lords affirmed the judgment, overruled this defence, holding that the letter must be regarded either as a *de præsenti declaration* that the woman was his wife, or as a promise *de futuro*, and as it was not disputed that *copula* had taken place after the letter, it was held to amount to marriage. I thought it was a very narrow case.

179. That was in 1839?——Yes; the judgment of the House of Lords was delivered on 23rd August 1839.

180. (*Lord Lyveden.*) How was that decided?—— It was decided to be a marriage.

181. (*The Attorney General.*) Was there a similar case in 1842 of Hamilton *v.* Hamilton?——Yes; it was so alleged, but the letter there was a very distinct letter. "I hereby solemnly declare that you are my "lawful wife, though for particular reasons I wish "our marriage to be kept private for the present," and the letter was delivered by the man to a third party, with instructions to hand it over to the woman, at his death. This was the material feature that distinguished the case from Anderson *v.* Fullerton, which was much relied on by the representatives of the man. It was considered by the Court of Session and House of Lords (1 Bell's Appeals, 736), that the third party was a trustee of the letter, for the woman, and in effect that the letter was delivered to herself.

182. In those cases, supposing the parties had ceased actually to cohabit, would there have been anything whatever which could have protected other people from marrying the same parties?——Nothing in the way of notice. Of course any such marriage would have been good for nothing.

183. There was no possible means of notice?—— None.

184. There could be no habit and repute in those cases?——None; because the object of the parties was that the connexion between them should be kept secret.

185. Was not the Dalrymple case very much of that sort?——It was the case of letters interchanged between the parties, each containing, as it was held, a *de præsenti* declaration of marriage, and nothing else.

186. They kept quite by themselves?——Yes; there was no proof that there had been consummation after the letters, and the judgment proceeded on the assumption that there had been none.

187. An English lady afterwards married Captain Dalrymple?——Yes.

188. And her marriage was held to be void?—— Yes.

189. (*Dr. Twiss.*) Have you any objection to a system of licences by the side of publication?——I think that would not be at all popular in Scotland.

190. Why not?——I think it would be somewhat repugnant to the habits and prejudices of the people of Scotland. Experience has shown this to be so. When the church establishment in Scotland was Episcopalian, marriage licences, or dispensations, were granted by the bishops, and when the Presbyterian form of church government was finally established in Scotland in the year 1689, the power of granting such licences, or dispensations, was reserved or given to the presbytery, as coming in place of the bishop, but this power has, I believe, never once been exercised, at least I never heard of a Presbyterian licence to marry. Further I think that publication answers the purpose for which it was designed, much better than licences.

191. Would you have all cases, cases of publication? ——That is my opinion. Publication of banns always precedes a regular marriage, as the law now stands.

192. We find a variety of irregular marriages?—— I do not think the number would be reduced by introducing or restoring the system of licences, at least to any material extent.

193. (*The Attorney General.*) Recurring to what I suggested about the subsequent publication, has it ever occurred to you to consider whether the objects of publicity would be attained by a periodical publication by the registrar in newspapers or other public way, of all the marriages recorded in his office?—— I think that would be giving unnecessary publicity.

194. Why so?——It seems to me that the desired object would be much better attained by publication of banns in church, or at the Court house as in some of our colonies, or by publication by a civil officer as in France, or by both, in the parishes or districts where both parties had their residence. There is kept in Scotland a register of proclamations, and it would be desirable that this register should be readily accessible, and with the view of its being so it may be printed, and indices, alphabetical, as well as chronological, from time to time adjusted; but I think no good purpose would be answered by publication to the world, in newspapers, of marriages, after they have been completed.

195. Do you think the world has no interest in who are married?——The world may be said to have an interest in the *status* of its citizens, but I do not consider the circulation by newspapers of the contents of parish registers would be a convenient mode of transmitting information on the subject.

196. Do not contracts with third parties depend on whether people are married or not?——Some certainly do; and where marriage is material to a proposed contract, the contracting parties would have no difficulty of ascertaining the fact, if registration was essential. They could scarcely be expected to retain in their memory any casual perusal they may have had of lists in newspapers, it may be years before. I do not see how there could be anything like a classified publication of the newspapers. There are about 1,000 parishes in Scotland. Is each parish to publish its own list; or are the lists of the 1,000 to be collected and arranged? I do not think any such system would work in practice.

197. There is the contingency of a bigamous marriage. Is there not a public interest in providing against those things?——I do not think the publication of the registers would have any material effect in this respect. Publication of the intention to marry would be more effectual. As a further means of giving publicity to an intended marriage, it might be directed that notice of the publication of banns should be affixed on the church doors or on the doors of the town house, or other places of public resort in the parish. And here I may be permitted to remark that loose as the law of Scotland is supposed to be in its doctrine, as to the constitution of marriage, it is well ascertained from the judicial statistics reported from time to time to Parliament, that there is more bigamy in England, in proportion to the population, than in Scotland. For the 10 years preceding 1863 the number of cases of bigamy in England was 884, and in Scotland 110, being the proportion of eight to one; but the population according to the census of 1861 was in the ratio of less than seven to one, the population of England numbering 20,066,224, and Scotland, 3,062,294. England, therefore, compared with Scotland, exceeded its proportion of cases by 163 during these ten years, taking the relative population as the measure. Thus:—

$$3{,}062{,}294 : 110 :: 20{,}066{,}224 : 720.79,$$
$$884 - 720.79 = 163.21.$$

Or, to put it in another form, there was in England one case of bigamy for every 22,699 of the population, and in Scotland one case for every 27,839.

I cannot say what proportion of the 110 Scotch cases were cases of irregular marriage, but I should think that in most of them, both marriages were regular. It has indeed been doubted whether the crime of bigamy would be committed, if the first marriage was irregular. The doubts were rested on the terms of the Statute, 1551,

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c. 19, respecting bigamy, which enacted that those who committed the offence "contrair the *aith and* "*promise* maid at the solemnisation and contracting "of the matrimonie," should be punished with the pains of "perjury." The highest authority in the criminal law of Scotland strongly entertained these doubts (1 Hume, 459). He thought that neither in the case of a clandestine marriage being followed by a regular, nor in the case of a regular marriage being followed by a clandestine, were there "the proper ma- "terials of the crime of bigamy." While these doubts attached to the question, the public prosecutor would naturally be reluctant to prosecute, and juries would be slow to convict, where either of the marriages was irregular or clandestine. But when the question is brought to the test of principle, there seems no ground for distinguishing between regular and irregular marriages, in this respect, for if an irregular and clandestine marriage be *valid and effectual* in law, the entering into another matrimonial relation, whether regularly or clandestinely, must necessarily be bigamy —the party having married two persons known to him or her to be both living at the same time; and accordingly the doubts may be now considered to be dispelled by several recent decisions of the Court of Justiciary. In Lord Advocate *v.* Brown, 24th December 1846 (Arkley's Reports, 205), the first marriage was constituted by a *de præsenti* declaration without any celebration, and the prisoner was convicted of bigamy and sentenced to 18 months imprisonment; and in the subsequent case of Lord Advocate *v.* Purves, 20th November 1848, (Shaw's Just. Cases, 126) the prisoner was found guilty of bigamy and sentenced to seven years transportation, where *both* the marriages he had contracted were irregular.

That bigamy is less prevalent in Scotland than in England, I attribute to influences and causes other than the state of its marriage law. The national character and habits of the people have, I think, much to do with it, and I doubt not that the comparison would have been even more favourable for Scotland, had there been no clandestine and irregular marriages in that country.

198. Do you think that the publication you suggest would practically be as effectual a mode of publication as by newspapers?——For all practical purposes I think it would be as effectual, though the news of a marriage would no doubt be more extensively circulated were it announced in newspapers.

199. (*Dr. Twiss.*) Is the present publication of banns for three weeks?——The law, in strictness, requires the publication to be made on three consecutive Sundays, but it is almost always done in one. The parties are proclaimed for marriage for the first, then for the second, and lastly for the third time, all on one day, and before the commencement of divine service.

200. (*Lord Chelmsford.*) The law requires the publication of banns for three weeks, but they do it in one Sunday?——Yes, they do it three times in one Sunday. Before the case of Jolly *v.* McGregor, 3 W. & S. 85, the practice was very loose. In many cases no banns were published at all; and yet certificates were given that banns had been duly proclaimed. Since Jolly *v.* McGregor it has been more regular. The Rev. Joseph Robertson, who celebrated the alleged clandestine marriage in that case, was found guilty of doing so, and of using as genuine counterfeit certificates of proclamation of banns, and he was sentenced to be banished from Scotland never to return under the pain of death, in terms of the Act 1661, c. 34.

201. It would not be a very great step in advance of the present mode of constituting marriage by consent *per verba de presenti*, to say that that consent should be given before a particular individual, before the registrar for instance?——Before the registrar. I think it would be a material step in advance, because certainty would be secured. But this alteration in the law would not, I think, be a violent shock to the system, or indeed interfere with the principle that marriage was constituted by mutual consent. It might not be thought necessary to provide that the consent should be given before any one, provided the parties at the time, delivered a written statement signed by both of them, to the registrar for registration.

202. Either the declaration before the registrar, or subsequent registration?——I think they should be, as nearly as two consecutive acts can be, contemporaneous. The registration should take place immediately upon the completion of the matrimonial contract.

203. (*The Attorney General.*) Only in this sense, that it was not to operate as a civil marriage until registration?——Not to be in any respect a marriage unless the parties interchanged their consent to marry before the registrar. I do not think that the parties should have the power of carrying in a statement that they had been married in time past, say six months before.

204. Then they would declare themselves man and wife before the registrar, whoever might be the registrar?——Yes.

205. Then they would not be obliged to make that declaration in such a sense as to pronounce an opinion as to their not having been man and wife before. Does it not occur to you that there might be persons accustomed to the present state of the law in Scotland who would consider it wrong or impossible to say that they are for the first time contracting marriage when they make such a declaration. Would it not be possible to give the effect of marriage then contracted for civil purposes to a declaration which would not imply that they had been previously living in concubinage?——The objection I ventured to express was to the registration of any previous marriage, the marriage being stated to have taken place at a preceding date to the registration. But an exception may be made in regard to irregular marriages entered into before the statute introducing the change. There might be registration of such previous marriages in the same manner as that provided in the Act of 1856, by warrant of the sheriff.

206. You would not give effect to the registration by relation?——I would not. If the parties could at any time register an antecedent marriage it might encourage them to live in concubinage. The tendency would be demoralizing.

207. (*Lord Chelmsford.*) Then you would require the registration to take place within a certain time after the marriage?——I see great difficulty in allowing any interval to elapse between the act, and the registration, of marriage.

208. (*Mr. Dunlop.*) Have you observed a proceeding before the Church Court as to a case in Shetland or Orkney where parties came forward and acknowledged a marriage so many months back for the purpose of avoiding proceedings in the Church Court?——Yes. I have a general impression that there was lately such a case.

209. (*Dr. Twiss.*) If you retained the practice of legitimating children, what would be the objection to registering at any time?——I have already said that in my opinion it would encourage concubinage. Its manifest tendency would be to increase clandestine marriages and irregular intercourse, if the parties knew that at any given time they had the power of converting their illegal connexion into matrimony, as from its earliest origin. A further objection would be that, in the intermediate time, a marriage may have been contracted, and then if you establish by registration a prior marriage, you enable the parties to it to divorce the second wife, the wife who might have been regularly married, in perfect ignorance of any impediment. A wide door would be opened to frauds. I think the law had better be left on its present footing, than changed so as to enable parties *ex post facto* to legalize a previous connexion —it may be illicit connexion—by registration as a marriage; a retrospective effect which is denied to regular marriages solemnized *in facie ecclesiæ*. The legitimation of children, by subsequent marriage, is an entirely different subject. There is some doubt, in the law of

Scotland, as to the ground on which legitimation *per subsequens matrimonium* proceeds. I do not think it is necessary to keep up the old fiction, viz.: that there was a presumption that at the time the child was conceived the parties were married in fact, and that the subsequent ceremony of marriage drew back to that date. In a case in the Court of Session of Kerr *v.* Martin, 14 S. & D. 1104, the judges were divided six to seven on this point; the majority held that it is not necessary to resort to the theory of relation, but enough to support the legitimacy of an *antenatus*, that there was a subsequent marriage, and by that subsequent marriage justice was done to the lady and the child. The minority held that there was a relation back to the time of the conception of the child, and inasmuch as there was an intermediate regular marriage, it formed a mid impediment, and the child was incapable of legitimation. The child died, and the question did not receive the judgment of the House of Lords.

With regard to the policy of the law, my opinion on the whole is in favour of legitimation *per subsequens matrimonium*. I have indeed felt the force of the objection that an encouragement is given to continued concubinage if the parties know that, at any time, their children may all be legitimated. Nothing can illustrate this better than the case of Walker *v.* M'Adam, where a man, *per verba de præsenti*, before witnesses, declared a marriage with a woman, whom he had for years kept as his mistress, and by whom he had a large family, and an hour after making this declaration committed suicide. The marriage was established, and the children declared legitimate by the House of Lords in May 1815; 1 Dow. 148.

But on the other hand I think that the unoffending offspring have a good claim to regard, and, as a measure of justice to them, my opinion is, that where the parties were, at the time of the birth of the children, free to marry each other, and continued to be so, from that date, down to the date of their actual marriage, such marriage should have the effect of rendering the children legitimate. This appears to me to be particularly desirable, in order to secure the harmony of families, when children are also born after the celebration of the marriage.

The law of legitimation *per subsequens matrimonium* prevails generally in France, Spain, Portugal, Germany, and most countries in Europe. It also prevails in many of the States of America, in Jersey, Guernsey, and the Isle of Man, and in some of the British colonies, those, namely, which did not adopt the law of England. At the Parliament held at Merton, in the year 1235, an attempt was made to introduce the rule, into the law of England. It was supported by the bishops, "*omnes episcopi*," and their support was founded on this, "*quia ecclesia tales habet pro* "*legitimis*." The temporal lords, however, "*omnes* "*comites et barones*," refused to concur, but the only ground on which their refusal was rested was the unsatisfactory one, "*quod nolunt leges Angliæ mutari*."—*Provisiones de Merton*, c. 9. 20 Henry III.

210. (*Lord Chelmsford.*) Would you propose to make the date of the marriage the date of the registration?——I think so, decidedly.

211. Or else you must have relation back to a certain preceding time, because the parties may come before the registrar and say, within three weeks, or any other limited time, we were married and I beg you to enter a register of that?——There is a very great objection to that; I think the registration ought to be immediately consequent on the marriage, more especially where nothing else is before the registrar but the statement or acknowledgment of the parties themselves.

The danger arising from allowing the parties, by their own statement, to establish a marriage, is recognized in the Act 1856, which only permitted registration where the parties jointly obtained the sheriff's warrant, after having satisfied him, by evidence, that they had been married to one another. The same policy guided the Legislature in a previous Act (11 Geo. IV. & 1 Wm. IV. c. 69.) by which it was enacted that in matrimonial causes, including declarators of marriage, no judgment in favour of the pursuer should be given "until the grounds of action "shall be substantiated by sufficient evidence;" which, as interpreted by the Court, means evidence other than the judicial admission of the parties. And it also had place in the civil law, from which so much of the doctrine of the Scotch law of marriage is derived. If a party admitted marriage under a reference to oath by the opposite party, the marriage was established only from the time of this judicial admission, "*quia* TUM *quasi novo consensu contrahi* "*videtur*."—*Huber, b.* 12, *t.* 2, § 9.

212. Does not that bring it to all marriages taking place before the registrar?——Yes, it does; all irregular marriages, and I think it ought to be so, unless the parties marry in the regular way.

213. (*The Attorney General.*) Practically that would not interfere with regular marriages at all, if the clergyman solemnizing the regular marriage were made registrar for this purpose?——No, in regular marriages the system of registration is regulated by statute. The certificate of the clergyman who marries is good evidence, although it is not taken to the registrar immediately. If it is taken within the period required by the Act it is perfectly sufficient. But this could scarcely hold in irregular marriages, if registration was essential to their validity, or rather if it were essential that they should take place before the registrar, and be thereupon registered.

214. (*Mr. Dunlop.*) In referring to the marriage of boys of 14 and girls of 12 you stated an objection, was your objection merely to the capacity of marrying without consent of the parents, or was it absolutely to the capacity of marriage at that age?——I think at that very early age there is not that amount of mental capacity to exercise a judgment on so important a step in life as marriage. But there may be special reasons, when children have passed the age of puberty, why they should be married, and their parents might be allowed to exercise a sound judgment for them. Marriage of such minors should, I think, be permitted with consent of parents.

215. (*Dr. Twiss.*) Is it the fact that such young people do marry?——There are instances in the books of such early marriages, and even cases of marriages annulled, because the parties were below 14 or 12; but these cases occur very seldom.

216. (*Lord Chelmsford.*) Then there would be the less objection to abolishing it?——I should think so; not to abolish altogether the power of minors to marry without consent, but to enlarge the period of restriction; I think 18 in males and 15 in females, would be reasonable. But I think it is very wrong to hold that young men or young women of 20, shall not be at liberty to marry, without obtaining the consent of their guardians.

217. (*Dr. Twiss.*) Is there a necessity for the consent of parents, in the case of a minor, for a regular marriage in church?——No; there is no provision made even as matter of order. Marriages generally do not take place in church in Scotland.

218. (*Lord Chelmsford.*) Is there any reason for making a difference with regard to the difference of age of marriage in Scotland, and in England?——I do not think that there is any substantial reason for a difference, and I think it very desirable, where there is no reason for a difference, that the laws in both countries should be the same. Before Lord Hardwicke's Act of 1753, boys of 14 and girls of 12 might in England marry without consent of their parents, and even now, if dissent is not expressed, and the banns not forbidden, the marriage would be valid, if otherwise regular.

219. The difference is that in England the consent of parents or guardians is required; while in Scotland no such consent is necessary even for the marriage of boys of 14 and girls of 12. Then by changing the time from 14 and 12 to 18 and 15, you still preserve the liberty without the consent of parents or guardians.

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as it exists? —— Yes, where the parties were above the ages of 18 and 15.

220. Then you would make a difference between the law of marriage in that respect in Scotland and England? —— There would be that difference if the law of England remained as it is at present.

221. Is there anything peculiar to Scotland which would render that difference desirable to be kept up? —— I do not know any reason why different systems should be adopted in England and in Scotland.

222. (*Mr. Dunlop.*) Would you assimilate the Scotch system to the English system, or the English system to the Scotch system? ——If I were obliged to deal with the two, in their integrity, I would rather introduce the English system, as to the marriage of minors, into Scotland, than the Scotch into England; but I think that both might be improved by the adoption of the limit I have suggested of 18 in males and 15 in females. It is right I should observe that there is a material difference between the law as to "minority," and as to "parent and child" in Scotland and England. In Scotland children when they pass the age of puberty, 14 in boys, and 12 in girls, are, in a sense, masters of their own actions. They may choose their own domicile, they may make their wills as to personal property, they are not bound to go to school though their parents desire them, and, as I have already said, they may marry, though their parents forbid them.

223. I do not think you have favoured us with your views as to habit and repute as affording a sufficient presumption of marriage? ——Habit and repute with cohabitation as husband and wife is in general good evidence that the parties at some time or other exchanged the matrimonial consent. It was so in England before the Marriage Act of 1753, which introduced registers of marriages, and it continued to be admissible evidence afterwards, as registration was not made essential to the validity of the marriage, but was matter of regulation and went in proof of it. See Lord Kenyon's exposition of the law in 1 Espinasse, 213, and see Fleming *v.* Fleming, 4 Bing. 266. If the law of Scotland was altered to the effect suggested viz., of having marriages before a registrar, I do not think this would exclude the admissibility of cohabitation with habit and repute as circumstantial evidence, that the parties had been married, especially after a lapse of time, as the marriage might have been regular, and it might be difficult or impossible to ascertain the time or place at which it was solemnized, or the registrar before whom it took place. I see no objection to this, either in a juridical or social point of view. I think there is much to recommend the presumption of marriage as is it regarded in the law of England, where there has been lengthened cohabitation as husband and wife, and undivided habit and repute.

It presumes that at the commencement of the cohabitation there was a regular marriage celebrated between the parties. The presumption is capable of being rebutted. But the presumption in the law of Scotland goes a great deal further, for it includes the case of marriage *per verba de præsenti*, and *per verba de futuro subsequente copula*, the negative of which it would be impossible to prove. So much is this the case, that marriage is frequently treated as being *constituted* by cohabitation, and habit and repute. And this serves to illustrate the undesirableness of the Scotch law, as it now stands, in a moral point of view. It is manifest that the woman may be induced to consent to an illicit, or equivocal, cohabitation, in the hope that it might, in course of time, merge into matrimony; and I doubt whether it can be accurately said, as it sometimes is, that the effect of cohabitation with habit and repute is to induce the parties to marry regularly, for the parties will be very reluctant to go through a ceremony, which would practically be a publication to the world, that they had hitherto been living in concubinage.

I may further observe that the instances are extremely rare in which marriage has been established on this ground alone. I do not think that half a dozen such cases could be pointed out, in the records of the Court of Session, and the Consistorial Court, from the earliest times. The evidence has generally broken down by reason of the repute being divided. And when the marriage has been established, the cohabitation and repute have most frequently been aided by evidence of acknowledgments, or conduct of the parties, from which consent to marry was inferred.

224. Is there anything else which occurs to you with which you can favour us? —— I may observe that although my attention has been, by the course of examination, directed to the law of Scotland, yet the Scotch law of marriage is important to the people of England and Ireland; for many of the questions which have occurred, on the subject of irregular marriages in Scotland, have occurred where one or both of the parties were English or Irish. When it was once determined that the validity of a marriage depended upon the *lex loci* of its celebration or contraction, English or Irish persons were enabled, by resorting to Scotland, to contract a binding marriage, though the requisites pointed out, by the law of their own domicile or country, were disregarded. And it may be said with truth that Lord Hardwicke's Act of 1753, confined as it was to England, contributed, in no small degree, to the increase of clandestine marriages in Scotland.

Hence it was that the blacksmith's house at Gretna, the toll-house at Annan, and generally the nearest habitation on the Scottish border, by any of the roads or ways leading from England, were establishments for celebrating clandestine marriages. These establishments had, in a great measure, their origin in the change of the English law in 1753. They were all contrary to the Act 1661, and might easily have been put down, had proceedings been taken, under that Act, against the celebrators and witnesses. The Act of 1856 has certainly been successful in putting an end to these irregularities, but its application is exclusively English. It does not apply where either of the parties has lived for 21 days in Scotland, or had his or her usual place of residence there, so that, for example, a Scotchman may now run away with an English heiress, carry her across the border, and immediately marry her, irrevocably, per *verba de præsenti*. An Englishman is prevented from doing this by the Act of 1856. He would have to wait for 21 days in Scotland before he could marry one of his own countrywomen. He might, however, marry a Scotch woman the hour after he set his foot in Scotland.

I think there is no branch of our law in which assimilation is more desirable than the law of marriage. I have already adverted to the correspondence between Lord Hardwicke and Lord Kames, shortly after the passing of the English Marriage Act, and at the time the bill for preventing clandestine marriage in Scotland was before the House of Lords, from which I inferred that their views were in favour of such assimilation. Lord Hardwicke in one of these letters, dated 17 October 1754, has the following remarks on the desirableness of a general assimilation of the laws of the two countries.

"The letter of September 18th, with which you
" honoured me, should not have lain so long unac-
" knowledged if the usual resort to me at this place
" (Wimple), and at this season, had not made it
" unavoidable. I am extremely obliged to your
" Lordship for this mark of attention to me, but more
" for that zeal which you express for improving and
" perfecting the union of the two kingdoms, to which
" nothing can contribute more than an uniformity of
" laws. Those great men who conceived and framed
" the plan of the union, who felt *quantæ molis erat*
" *Britannam condere gentem*, wished to attain it, but
" found it impracticable in the outset; but I have
" reason to think, that they never imagined, near half
" a century would have passed, after these articles
" were established without a greater advance being

" made towards it, than has hitherto been attempted, " an evil which I have often lamented, and should " rejoice to see remedied, because without it an in- " corporating union must be very defective."—*Tytler's Life of Kames*, vol. 1. p. 211.

I may also refer to the opinion of Sir David Dalrymple, (afterwards Lord Hailes,) the author of *The Annals of Scotland*, and many other works, chiefly on Scottish history and antiquities. At the time Lord Hardwicke's Act was passed, he was in practice at the Scotch bar, and was promoted to the bench in the year 1766. He was an excellent lawyer, a very learned and accomplished man, and, as observed by the editor of his *Decisions*, Mr. M. P. Brown, advocate, "was " known to have been distinguished by habits of " accurate observation." From his judgment in *Scruton* v. *Gray*, 1 December, 1772, (*Hailes' Decisions*, p. 499), it is clear that Lord Hailes entertained a strong opinion against the policy and expediency of the marriage law of Scotland. The question in that case was whether a jurisdiction could be constituted against an Irishman forth of the kingdom of Scotland by the arrestment of some moveable goods belonging to him in that country, in a declarator of marriage at the instance of a woman residing in Scotland. A large majority of the bench, of whom Lord Hailes was one, were of opinion that it could not. In his opinion Lord Hailes said, "By the law " of Scotland, marriage may be proved from consent, " without the intervention either of Church or " State. This is not derived from liberal principles " of policy, nor from generous maxims, with regard " to the constitution and interpretation of contracts, " but from a fouler source, from the rules of the " canon law, as it stood before the era of the Council " of Trent. Marriage by consent is valid with us, " because it was valid by the ancient canon law. " The Romish clergy assembled at the Council of " Trent, saw the evil consequences arising from " this latitude in the constituting of marriage. They " therefore introduced a reformation, and by Sess. " 24 c. 1, *De Refor. Matrim.*, required the *sacerdotal* " *benediction*, as necessary to the essence of matrimony. " Some feeble attempts were made by provincial " synods in Scotland to introduce the canons of the " Council of Trent. But the reformation from Popery " immediately ensued, and the Council of Trent was " no more thought of unless with execration.

" Thus at our Reformation, the canon law as it " stood before the Council of Trent, continued to be " the law of Scotland, in this, as in other matters " consistorial, unless so far as altered by statute.

" In the nations where the Council of Trent was " received, the *sacerdotal benediction* became of the " essence of marriage.

" Other nations modified marriage in different " ways.

" In France, a proclamation of banns was super- " added to the *sacerdotal benediction*.

" In the United Provinces, *the previous approba-* " *tion of the civil power* was required.

" In England, the *sacerdotal benediction* seems to " have been sufficient, till a late statute required " further solemnities.

" In a word, all the European nations, Scotland " only excepted, have departed from the more ancient " canon law, and have required the interposition " either of Church or of State, or of both, to validate " a marriage.

" Thus, what was the law of all Europe, while " Europe was barbarous, is now the law of Scotland " only, when Europe has become civilized.

" Notwithstanding the latitude in marriage per- " mitted with us, though reprobated and exploded " in every other country of Europe, we still acknow- " ledge a distinction between marriages regular and " irregular.

" From the very dawn of the Reformation, mar- " riage by a minister, after proclamation of banns, " was the ordinance of the church.

" This we learnt from the Geneva model: we find " it in the First Book of Discipline, and in the Acts " of the General Assembly, 1638. This became the " ordinance of the State in 1641 (c. 8.).

" The statute 1641 was rescinded at the Restoration, " but was repeated in the statute 1661, c. 34; and " this is the statute law of Scotland at this day.

" Thus we see that there are two sorts of marriage " in Scotland, and I hope the distinction will be " remembered.

" The one is regular by a minister after proclama- " tion of banns, the other, in whatever way it may " be subdivided, is destitute of those solemnities, and " is irregular."

J. Anderson, Esq., Q.C.

28 Feb. 1866.

Wednesday, 7th March 1866.

PRESENT:

The Right Hon. The Lord Chelmsford.	Vice-Chancellor Sir W. P. Wood.
The Right Hon. The Lord Lyveden.	Travers Twiss, Esq., D.C.L.
The Right Hon. The Lord Naas.	Alexander Murray Dunlop, Esq., M.P.

LORD CHELMSFORD IN THE CHAIR.

Mr. Alderman Salomons, M.P., examined.

Mr. Alderman Salomons, M.P.

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225. (*Lord Chelmsford.*) I believe you wish to make some statement to the Commission?—What I want to call particular attention to is this. When the question was settled in the year 1836 it was so entirely new to Parliament that perhaps arrangements were then made that might conveniently be revised now, I think, both with advantage to the State and to the Jewish community. I want the Commission distinctly to understand that I appear before them entirely as a private individual, expressing my opinion both as an English gentleman as to what I believe should be the duty of the State towards all religious bodies, as well as a member of that community to which I wish every prosperity and desire every convenience. I have no wish in any way to interfere with their convenience, but to set them entirely free as between themselves and the State, which they are not at present. I will call your attention now to the marriage law.

226. (*Dr. Twiss.*) The Civil Marriage Act?—Yes. I first refer to the general declaration of Parliament in that Act as to the legality of marriages as regards Quakers and Jews, the former being allowed to contract marriage according to the usages of their society, and the latter according to their usages. Of course I need not remind the Commission that the Jews and Quakers, the Jews especially, were excepted out of the old marriage Acts. There are two cases of disputed marriage very well known in the equity courts, showing that a Jewish marriage had formerly to be proved in the same way as if you were proving a foreign marriage. It was proved by referring to Rabbinical authority, and the opinions of eminent Jewish writers upon ecclesiastical law as to what did or did not constitute a Jewish marriage. All that is got rid of, and Jews are now brought within the same general laws as the rest of Her Majesty's subjects. Jewish marriages were generally celebrated in an unconsecrated building or at their own houses. There was no difficulty of marrying in any synagogue, if persons desired it, but it was not the custom to do so, and no such buildings

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were registered for marriages before the year 1836. Jews now can register their synagogues for celebration of marriages in the same manner as other dissenters. They have still the power, which it is desirable to preserve, of marrying according to their own usages and customs at their own houses, and one way of doing this conveniently is, that the secretary of each synagogue can be appointed a registered officer with power to register marriages, and the secretary of every synagogue has that authority given him by the Marriage Act, but then it is only on the authority of the president of a body very well known amongst the Jews called the Board of Deputies, who certifies to the Registrar General that he is the secretary of a synagogue of persons professing the Jewish religion. The Jews have had, almost since their renewed abode in this country, a standing committee very much like that of Grievances of the Society of Friends, which observed all matters between the Jewish body and the State. In former times they were often called upon with a view to guard the Jews from any attack upon their rights or religion arising from some legislation that was either directed against them or which might by chance injuriously affect them, and they were a very useful body for that purpose up to the year 1836. They are still in existence, and they have at their head a gentleman whom I am sure everybody respects for his high character and most exalted behaviour on all occasions. He has been the president of the Board of Deputies for a great many years. It is under his signature or that of a gentleman similarly placed at its head, who is chosen by the voice of the Board as president, that any secretary of a synagogue is made a registrar of Jewish marriages. Hence, though the power is given to one individual who may be a gentleman of high character, very enlightened and very orthodox, you might on the contrary have it given to a man quite as orthodox but much less enlightened. The whole power is now centred in one individual to determine whether secretaries of synagogues shall be registered or not. Here the State lends itself, as it were, to giving authority to an individual beyond what should be possessed by any person in such a case as this. See what occurred. It so happened that about four years after this power was given by Parliament, a difference broke out among some of the members of the Jewish body, perhaps not on the great ground of fundamental principles, but still sufficient to create strong religious discord. The consequence was that a number of them seceded from their established congregation and they selected a synagogue for themselves, and they gave themselves a distinctive name. The Jews are divided into two distinct bodies, which do not mean anything as regards their orthodoxy, but still the division is clear and well understood. They are borne by two different classes of congregations, those who came from Spain and those that came from Germany. They are known throughout Judaism as the Portuguese Jews and the German Jews. The seceders, perhaps properly enough, did not like to continue a name that to Englishmen appeared to be foreign, so when they seceded they gave themselves the name of British Jews. They bought a piece of ground, established a synagogue, and set on foot an establishment. Of course they had their minister and they had their secretary. The question then arose about having the secretary certified to the Registrar-General for the celebration of marriages. Under the advice of the Jewish ecclesiastical authorities that was refused by the Board of Deputies, or at least the president refused to certify him as a secretary of a synagogue to the Registrar General. That may be said to be rather a strong measure, and it would be considered so if it had not been for the ingenious way in which it was done. The power given by the State in the words of the Act of Parliament is for the president to certify who is the secretary of a synagogue of persons professing the Jewish religion. No question could arise as to who is a secretary, but a great question may arise as to what is a synagogue, and the question was referred to the ecclesiastical authorities as to what constituted a synagogue. They decided that persons in rebellion to the established ecclesiastical authorities could not constitute an orthodox synagogue. The consequence that followed was that their secretary was not certified, and there you had the anomaly of persons professing the Jewish religion who by Act of Parliament having a synagogue were entitled to have a secretary registered but who was not registered for years, because he did not come up to the assumed standard of rabbinical orthodoxy. That of course created a great deal of bitterness, and at last, about ten years ago, there was another Act of Parliament passed by which a sort of *quasi* authority is given in a very confused clause which enables any congregation that may be in association with a synagogue of British Jews to certify a secretary of a synagogue of persons professing the Jewish religion. So there are really two Jewish powers now, I will not say independent of the State, but in accord with the State, that can certify secretaries of Jewish synagogues. That seems to me both undesirable and inexpedient. In the first place it promotes discord in a small body by one party being enabled to assume power over the other, which is always undesirable. The next thing is that it puts the State in a very anomalous position in having to appear as a party to these religious disputes, which I believe to be very inexpedient. I have suggested a mode by which these difficulties may be entirely got rid of, giving perfect liberty to the synagogues without compromising any of their customs or convenience.

227. (*Lord Chelmsford.*) If I understand you correctly, the chairman of the Board of Deputies may certify on the one hand, and the secretary of synagogues or congregations of persons on the other?——Yes, by a new Act of Parliament; that is, by a subsequent Act passed in the year 1856.

228. What is the particular evil of which you complain, because as it appears one way or the other, synagogues, or *quasi* synagogues, will be registered for the purpose of marriage, so that all persons of the Jewish society can be married either in what I may for the moment call the orthodox synagogue or in the other synagogue?——If you look at it theoretically, it may be difficult at once to see where is the grievance; but if you look at it as I have seen it practised you will see what a very great hardship it is. I will give you an instance which occurred in my own family. While these disputes were going on a niece of mine was to marry one who belonged to the "British" Jews' congregation. The synagogue of the British Jews' congregation was registered as a building for celebration of marriages, and there would have been no difficulty whatever in her marrying within the walls of the British synagogue. But the British Jews' synagogue having no certified secretary the marriage could not lawfully be celebrated at home, the civil marriage was therefore first performed at the register office at Marylebone Court House by the registrar and then afterwards the religious marriage at their own house. Even now, when reverting to the subject, it renews to my mind a most disagreeable scene of needless and painful indignity. I do not see why, as regards Jews or any other religious society, there should be a power stepping in between the State and independent congregations, which should control them in the name of the State merely on religious grounds.

229. Where parties wish to be married in their own houses, what is the licence or authority for that purpose? From whom does it emanate?——The licence is the same. The only thing is the registering secretary. When marriages of dissenters take place in their chapels there is a registrar present. When the Jews marry in their synagogues, there would be a registrar present whether he came from the registrar's office or whether he was the secretary of a synagogue; but this secretary being a registering officer he can by the Act of Parliament register a marriage wherever it takes place. What I want to see is the Jews put on the same footing of religious freedom as all other dissenters, that they shall have perfect liberty from the State, so that, when a congregation is established, they shall at once be able to go to the Registrar General and have their secretary registered.

230. Cannot the secretary of the new congregation register a marriage that takes place in a private house?——Yes.

231. But who cannot?——He can only with regard to his named Jewish sect under the recent Act of Parliament. You would be multiplying religious names in Acts of Parliament, and Parliament would have to get into the knowledge of the number of Jewish sectarian or other divisions. We know the Jews by the general Parliamentary name of persons professing the Jewish religion. What has the State to do with their being called British Jews, or by any other new or fancy names hitherto unknown to the law? Now, observe what has recently occurred; see how the system of allowing an intermediate interference between the State and the congregations operates. Look at what took place only last year: in consequence of the great migration of a large number of Jews westward they established a very handsome synagogue at Bayswater. That synagogue was established by contributions from two of the parent synagogues, and by private subscriptions. It is the usual mode of providing financial resources for the various expenses of Jewish establishments that offerings of money should be made periodically by the members, free-will and voluntary offerings. The understanding was that all the offerings that should be made at Bayswater would be transferred to the parent synagogues in the city, upon whom the burden of relieving the Jewish poor does mainly fall. The consequence was that this synagogue was considered a branch synagogue. When this synagogue was established, with a small portion of money lent by the parent synagogue, and a larger amount subscribed by residents of Bayswater, they wanted to have their secretary certified to the Registrar General, so that they might celebrate marriages to be registered by their secretary. A veto was lodged with the president of the Board of Deputies, to deprive them of this privilege, and they were for months in that condition. At the time I first submitted my views to this Commission it was not settled. The State was thus prevented from registering the secretary of this respectable congregation by a mere synagogue squabble. The thing went on for awhile. The question was at length submitted to the Attorney General. He advised, "He did "not know a branch synagogue. A branch synagogue "is a Jews' synagogue. He could not distinguish a "branch synagogue from any other synagogue," and at length the Secretary of Bayswater synagogue was certified by the President of the Board of Deputies. But what I object to is this sort of tutelage, that the Jewish congregations should have to call upon and depend on the certificate of somebody standing between them and the State, and not have the same freedom as every dissenter has who belongs to a chapel, and where ten or twenty of the worshippers may go to the Registrar General and complete their arrangements for the celebration of marriages without first obtaining the permission of any of their congregational deputies.

232. What is the remedy which you propose?——It is, that the wardens of the synagogue, with ten of the members, should certify before a justice of the peace that they were a synagogue, that they were worshippers at a synagogue which had been established for some period, that the building might be registered, and that the secretary might be a registered secretary for performing marriages. The thing could be done between every congregation and the State without the intervention of any ecclesiastical or other authority whatever.

233. (*Dr. Twiss.*) Do I gather from you that you object to the present necessity of the Jews marrying according to their usages?——No, I have no objection whatever to that, but it seems to me an extraordinary thing, that the State should see to and interfere in it. If you look at the schedule of the Act it is very surprising. There are three sets of people whose usages by the Marriage Registration Act, 6 & 7 Will. 4. cap. 86, clause 31, the State seems to take notice of. The same schedule C. in the Act that is referred to for the Church is also for the Jews, only excepting "rites and ceremonies" are mentioned for the Church, and for the Jews, and "the usages" also. The individual who registers the marriage of the Jews certifies to the rites and ceremonies and to the usages, and the State takes charge of it as such, so you get mixed up with these religious usages.

234. (*Sir W. P. Wood.*) I understand your opinion to be this—that at present every dissenting Protestant congregation in England can have itself registered on application by members of its own communion or chapel?——Yes.

235. At present only one particular set of Jewish dissenters, if I may so call them, called the "British Jews," have this privilege accorded to them, and every person must be either an orthodox Jew or a British Jew to obtain a certificate of his synagogue, and if there should arise a third or fourth sect they would not be able to be registered?——No, I think not. At first there was assumed to be only one; but since the Act passed ten years ago, there has been a second body acknowledged, and any one declared to be in connexion with the British Jews can have the secretary registered under the signature of the secretary of that synagogue, but not otherwise.

236. Still it must be through the medium of the British Jews?——Yes.

237. Supposing a totally independent Jewish sectarian body to arise, you say they could not be registered in the same way?——No.

238. (*Lord Chelmsford.*) Would you propose to treat each synagogue as a separate community or congregation?——Yes.

239. And then to allow the secretary of that synagogue to be the registrar under certain terms. I think what you propose is that each synagogue so registered should have the right of having the secretary of the congregation appointed registrar of marriages for that synagogue on the signature of the warden or wardens, or five or ten of the regular worshippers, declared to that effect before a justice of the peace?——Yes; I think that gives you every security that you can possibly want, and prevents any very small synagogue of no account in the provinces getting it, because it must belong to a synagogue that is registered for public worship and celebration of marriages.

240. Practically, all the existing synagogues have the secretary for their registrar, have they not?——Yes; but they can only be registered through this sort of unnecessary interposition between the State and themselves.

241. (*Dr. Twiss.*) Can a marriage take place between a member of one synagogue, we will say, of British Jews and a member of a synagogue of orthodox Jews, in the presence of the registrar of British Jews, at a private house?——Yes; because it is the registrar that gives effect to the marriage, but then he would have to certify under the Act that the marriage was between two Jews, and that they were married according to the usages.

242. (*Sir W. P. Wood.*) I suppose his certificate is conclusive. The question of whether the usages have been complied with cannot be disputed after the registrar has certified?——Whether he is liable to an indictment for felony I do not know, but I have tried very much to satisfy myself whether a marriage of that kind could be opened or not. I do not think it could, but it is very difficult to say whether it could or could not.

243. (*Dr. Twiss.*) Are the usages of British Jews different from those of the orthodox Jews?——No; they differ in some trifling matters, but what I understand as usages are those which have been the custom for ages. Now among those congregations I have been speaking of, the orthodox Portuguese and German Jews, even in their marriages they are not precisely the same in all their forms; their usages are traditional. They have come down for very many years, but they are not alike.

244. (*Lord Chelmsford.*) As I understand, a Jewish marriage is always an ecclesiastical marriage, not merely a civil contract; there is always the ecclesiastical blessing?——Always. Of course you are

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aware that there can be a binding Jewish marriage without the ecclesiastical blessing. There is no doubt about that; but the ordinary regular Jewish marriage is always by what they call the "canopy" and "sanctification."

245. What is the sort of marriage which takes place when there is not the ecclesiastical ceremony?——Just the same as a Scotch marriage. A marriage contracted in the presence of trustworthy Jewish witnesses is a valid marriage according to Jewish ecclesiastical law. It may be irregular, but it is a binding marriage. In the cases of Lindo *v.* Belisario, and Goldsmid *v.* Bromer, those marriages were annulled. The marriages could not have been annulled according to Jewish law on the ground of being only a civil contract, but they made out that the witnesses to the marriage were people whose oaths were not to be taken, because they were not persons whom the ecclesiastical authorities would confide in.

246. Would there be any objection to allow marriages to take place in that way by mere consent before the secretary of the synagogue?——They are placed in the same position, now. Anyone may go to the registrar's office and be married there, and the Jews may do that now.

247. (*Dr. Twiss.*) Can any irregular marriage be set aside by your ecclesiastical authorities?——All the marriages now are under the law of England. They may assume anything, but the whole law of marriage applies the same to Jews as it does to Christians.

248. Would an irregular marriage be a marriage according to your usages?——I should think, tried by ecclesiastical laws, it would not, but then, I believe, there is very little required by the Jewish ecclesiastical law to make a marriage.

249. (*Sir W. P. Wood.*) You have, I presume, like all nations, some unlawful degrees of marriages?——Yes.

250. Suppose a couple to be united who stood in an unlawful degree of relationship to each other, would the Jewish authorities proceed to set that aside, or would it come before the courts?——I think it would come before the courts. I believe no synagogue marriage takes place that has not the previous consent of the Rabbi, so as to prevent irregular marriages.

251. (*Lord Chelmsford.*) Would there be any objection to making the Rabbi the registrar in fact of the marriage, and making the parties go before him and make their declaration and give their consent to him, upon which he registers that consent; and then, afterwards, they may, if they please, have that quite independent of the ecclesiastical part of the ceremony?——You must look at the constitution of every synagogue. Every synagogue, as it were, forms an independent district or parish. It has its official staff chosen by the congregation, consisting of a minister, an assistant reader, and a secretary. One of them is generally empowered to perform the marriage ceremony, and the secretary is only considered the representative of the superintendent registrar. The Rabbi has no more power in celebrating a marriage than anyone else. He is like the Archbishop of Canterbury compared with an ordinary curate. He is a man of greater dignity, but he has no other power. If, therefore, by Rabbi you mean the minister or other official attached to a synagogue, I say there can be no objection. The marriage ceremony among the Jews I hold to be a civil contract with a religious blessing. The individual chosen by the congregation to celebrate marriage may be a layman attached to the synagogue, and need not be, as in the Established or Roman Catholic church, a consecrated person, which I presume is the common idea of a Rabbi. I think it is the custom for congregations to hold from the chief Rabbi an authority to marry, but then this is rather to be considered as a token of acknowledgment of his authority than of his conferring any religious power, which the congregation of its own authority could not exercise, to enable its elected minister to celebrate a legal Jewish marriage.

252. (*Sir W. P. Wood.*) If you go to the registrar's office as Jews, is the registrar obliged to certify that it is according to your usages?——No.

253. I suppose you simply take each other as man and wife?——Yes, according to the conditions of the Marriage Act. During the time this British Jews' split was going on, say from the years 1841 to 1856, this mode of civil marriage was the ordinary way adopted by persons belonging to this west London synagogue of British Jews. So they went to the registrar first, and were afterwards married by one of the ministers of the synagogue at their own house. I attended the marriage at the registrar's office, and I thought we were compelled to submit to a gross humiliation. I am not favourable to civil marriage as performed by the registrar. I was present at this marriage, and I thought it was a great hardship imposed upon us. It made a great impression upon me, and I am doing the best I can to prevent any future grievance of that sort.

254. (*Dr. Twiss.*) Does the secretary send any copy of his certificate to the Registrar General?——Yes.

255. In fact there is a record with the Registrar General of all your marriages?——Yes. The secretary attends, and it is conducted in precisely the same way as a marriage in church or chapel.

256. (*Lord Chelmsford.*) If I understand, the only tangible objection which I can gather out of the evidence which you have been good enough to give to the Commission, is the difficulty that there may be in registering synagogues, which, if I may use the expression, break off from the others?——Yes, but then with those that do not break off there is a power within the State, acting under the authority of the State, that gives trouble, assumes a control and a religious agency never contemplated by Parliament. I say that every Jewish congregation ought to possess the right of having the secretary of their synagogue registered as any other body or congregation within the realm has to get their chapel registered, without first going to and obtaining the sanction of boards of deputies or of any other person whatever.

257. (*Dr. Twiss.*) The hardship you now think is on the orthodox Portuguese Jews?——Yes. On all the Jews in the kingdom. There is the Bayswater synagogue, established by residents in that district, is one of the handsomest in London, and cost 8,000*l.* or 10,000*l.* It is an orthodox synagogue in religious unison with the ecclesiastical authorities. Notwithstanding this, a representation in the nature of a caveat was lodged with the board of deputies, and they withheld the certificate and prevented its secretary being registered upon some miserable ground of congregational connexion; it was a gross interference as between the State and that congregation. They had their synagogue all ready with all their staff; but having to go to this intermediate authority (the board of deputies) to obtain a certificate to enable the Registrar General to make their secretary the registrar of marriages for that congregation, a question was mooted which had nothing to do with religion or otherwise, and it kept the congregation at bay for a long while, till relieved by the opinion of the Attorney General, when the secretary was at once certified. I have a copy of the Attorney General's opinion in my pocket.

258. The board of deputies is not an ecclesiastical authority?——No; but they assume to be in the interest of orthodox ecclesiastical authority.

259. In these matters they are a sort of governing body?——Yes, an administrative body. I would not wish you to be guided solely by my statement. I express strongly what I believe to be right, and I express what I think is desirable and consistent, that there should be no distinction in any respect between one class of dissenters from the Church and another class. You might receive the evidence of a gentleman exceedingly intelligent and well informed, and attached to the board of deputies, whom I would suggest as a witness before this Commission. It is that of Mr. Sampson Samuel, who is the secretary of the board

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...ties. I was a member of the board of deputies ... dispute first broke out, and I left on record notice of motion as a protest against their not certifying the Secretary of British Jews' synagogue. I ...ered that it was an attempt to promote Jewish orthodoxy by the authority of Parliament, and nothing could be further from the object of the Marriage Act.

260. (*Dr. Twiss.*) Does the synagogue elect its own minister, its own rabbi?——Everything is elective among the Jews. It is the most complete model of a republic you can well imagine.

261. (*Lord Chelmsford.*) How is their chief rabbi elected?——In the same way.

262. (*Sir W. P. Wood.*) By the members of all the synagogues?——Yes. The whole machinery is purely republican, and that is another reason why I object to the State creating this governing power.

Adjourned.

Saturday, 10th March 1866.

PRESENT:

THE RIGHT HON. THE LORD CHELMSFORD.
TRAVERS TWISS, ESQ., Q.C., D.C.L.
ALEXANDER MURRAY DUNLOP, ESQ., M.P.

LORD CHELMSFORD IN THE CHAIR.

The Rev. ROBERT WALTER STEWART, D.D., examined.

Rev. R. W. Stewart, D.D.

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263. (*Lord Chelmsford.*) I believe you have for ...ome time officiated as a clergyman at Leghorn?——Yes, I have been a minister there for 21 years.

264. And you have officiated as a clergyman there ...ll that time?——Yes.

265. I believe you are anxious to make some communication to the Commission upon the subject of marriages ...f British subjects abroad?——Yes.

266. Will you be kind enough to state what you ...ish to say to us upon the subject?——There is one ...hing I wish to say with regard to the last Act that was ...assed, on the 28th July 1849, for facilitating the ...arriage of British subjects resident in foreign countries.

267. (*Dr. Twiss.*) What are called consular marriages?——Yes.

268. (*Lord Chelmsford.*) That is under sect. 20, ...ap. 68 of the 12th and 13th Victoria?——Yes. It is an ...dmirable Act. It has been found to work remarkably ...ell, but there is one particular in which there might ...e great improvement, which has been overlooked, and ...onsiderable inconveniences arise therefrom to various ...arties. It is in section 2. It is there provided that in ...very case of marriage, both the parties, before going to ...he consulate to give their names in for the publication ...f banns, must have resided one whole month within the ...oundaries of the consulate. A great difficulty in the ...ay of many persons engaged in business arises from ...he fact that the marriage trip would thus occupy nearly ...wo months. There have been several cases of persons ...oming out from England to be married who could not ...fford to leave their occupation for so long a time, and ...ad to go in consequence to the nearest embassy to be ...arried. I have a case of the sort in view next month, ...n which a person in business in the north of England ...s coming out, and cannot remain a whole month; the ...onsequence is he must go to the embassy at Florence. ...think provision might very easily be made for that in ...his way, by the proclamation of banns being still made ...s now, at the consulate within the bounds of which ...ne of the parties resides, according to the provisions of ...his Act. While with regard to the other party, if living ...n England, surely a certificate of proclamation of banns ...n this country by the properly qualified person, whoever ...e may be, attested by a justice of the peace as genuine, ...nd that perhaps countersigned by Mr. Hammond or one ...f the officials at the Foreign Office, known to the consuls ...r vice-consuls abroad, ought to be quite sufficient, seeing ...hat both parties have already been proclaimed in the ...onsulate, and ample opportunity has thus been afforded ...or making all necessary inquiries. If the party coming ...rom England bring with him such a certificate as that, it ...ould, I should think, be all that was necessary, for I ...ave no doubt the object in view in this clause is to pre...ent improper marriages, the re-marriage, for example, of ...n unprincipled man who has deserted his lawful wife, or ...landestine marriages without the knowledge of the ...arents. The month's residence is required in order to ...ive time to inquire with regard to the character of the ...nknown party. If that is secured it seems to me quite sufficient, and it would obviate a difficulty widely complained of. We have found the same difficulty in respect to persons coming from the colonies; for example, from Gibraltar and Malta to be married in Italy; unable to spend a month, they have been obliged to go to the nearest British embassy to be married there.

269. All that you desire would be that the party coming over to a foreign country to be married should come with proper credentials to show that he is the person who is referred to, and also, if it is necessary that there should be consent or any evidence at all, that that should be produced at the time?——Exactly, that is all that is necessary. In that case there would be no difficulty in the marriage taking place at once, for there would be a proclamation within the bounds of the consulate at the same time which gives publicity to the names of both parties. The same practical difficulty presents itself when the parties to be married reside within the bounds of separate, it may be conterminous, consulates abroad. I will give an example taken from Italy, because I know it best. An instance occurred last year in which two parties, one residing in Genoa and the other in Leghorn, were to be married at Leghorn. The party residing in Genoa was obliged to leave his place of residence, and not only so, but being a clergyman, he was obliged to leave his congregation for a whole month and come and reside at Leghorn, in order that he might comply with the requirements of this clause, although the consul at Genoa would have been the proper person to testify with regard to his character.

270. In such a case there would be no difficulty in requiring that a notification should be given at each consulate, and that would satisfy everything in the shape of protection?——Yes; in the same way with regard to the colonies, Malta, for example, a certificate of proclamation of banns in the ordinary way, to be attested by the secretary for the colony, would be quite sufficient to declare that the man to whom it is granted is free to marry.

271. In Malta is it necessary that both the parties should be resident?——I think not, but I am not sure.

272. I mean under this Act. Does this Act apply?——No it does not. This is only for British subjects abroad; in foreign countries, not in the Colonies.

273. We should have to consider what was the law in Malta with regard to the publication before marriage. Can you give us any information on that subject?——No, I cannot. It is so long since I resided in Malta.

274. (*Mr. Dunlop.*) Your general position is that residence should not be required except in the case of one of the parties, and that the other party should bring evidence that he has complied with the marriage law in the place where he resides?——Exactly.

275. (*Dr. Twiss.*) Are you at liberty under this Act to marry in your own chapel in Leghorn in the

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presence of the British consul?——No; we always marry at the consulate.

276. Is any inconvenience felt from that, or do people object to going to the consulate?——We feel no inconvenience, because in Scotland we marry at home; but some parties belonging to the Church of England do feel it, and in such cases they go first to the consulate to be married by the consul, and afterwards to the church, to have the marriage service performed by the British chaplain.

277. Are your observations confined to Presbyterian marriages?——No, the inconvenience is felt by all, and if that were removed all would be benefited. To pass on to another point. I have spoken already of the British embassies, and of people who could not afford time to comply with this Act going to be married there. We have had a great many instances of that sort, especially in the case of men engaged in business in England, or Malta, or elsewhere, who felt that they could not remain the month, and went immediately to the embassy and were married there. I have already stated that clause 2 appears to have been put into this Act in order to give time to inquire into the character of those who were going to be married, but it is perfectly useless as long as the usage of marriage at the embassy remains as at present. I believe it is more a consuetudinal law than anything else. I am not aware whether there is any Act of Parliament which sanctions marriages at embassies. At present a man has nothing to do but to call on the ambassador, if he can get access to him, or on the secretary of legation the day before, saying he wishes to be married the next day, and he is married without any further difficulty. He calls on the chaplain, and the chaplain comes to the embassy and marries them.

278. (*Mr. Dunlop.*) And no residence or proclamation is required?——No. According to this Act there is residence and proclamation; in the case of marriage at the embassy there is no proclamation and no residence required.

279. (*Lord Chelmsford.*) How is that? Does not this Act of the 12th and 13th of Victoria apply to marriages before the ambassador or minister?——Certainly not. In the preamble these marriages, I think, are left on the same footing as they were before.

280. (*Dr. Twiss.*) This Act applies to parties one of whom may be a subject of the country where the marriage is solemnized?——Yes.

281. That does not apply to marriages before ambassadors?——No.

282. In the case of marriages in ambassadors' chapels they will not marry without notice or without compliance with the law of the country to which one of the parties is subject?——We have not had an instance yet in Italy, I do not know whether there has been elsewhere, of parties of different nationalities coming to be married at the embassy. I am not aware of any case of that sort, and I know of no legal provision for it, such as is contained in the consular Act. I wish to bring out now the contrast between what British subjects have to submit to under this consular Act and the privilege which they have at the embassy. I think marriages at both places should be put on the same footing.

283. This Act goes further, it enables a British subject to marry with a subject of the country in the consulate?——Yes; we have found that to be a very great advantage in the past. We should not like that changed at all.

284. Are you aware that any marriages are celebrated under this law at the consulate where one of the parties is a subject of the country, and the law of the country has not been complied with in regard to notice or publication, whatever may be required by the law of the country?——I should not like to answer positively. Previous to this present year there was no marriage legal for Italians but that of the Church of Rome. But the consuls require the production of the papers which that church insists on in cases of mixed marriage.

285. In such a case the marriage would not be good according to the law of that country?——Perhaps not in cases where the husband is an Italian, were legal questions to arise in Italy out of such marriage. I have not heard of any such marriage being called in question, and (as one of the parties is always a British subject) I do not think there is any fear of such marriage being disturbed.

286. (*Lord Chelmsford.*) It is not a pleasant state of things, is it, that the marriage should merely be winked at, because if it were brought into question it might be invalidated on the ground of its being contrary to law?——I think, according to the law of Tuscany formerly, and of Italy now, both marriages and wills made in accordance with English law are recognized as valid. As a mixed marriage under this Act is in accordance with the law of Great Britain, one of the parties being a British subject, I believe they would recognize it.

287. (*Dr. Twiss.*) Would that be so where a man was a subject of the country. If the man was a native of Leghorn and the woman an Englishwoman, would the Tuscan law recognize such a marriage?——I understand so. I remember the case of an English lady being married to an Italian officer at Turin. Some special inquiry was made on this very point, when the commander-in-chief assured the parents that the Italian war office would recognize the marriage, and that if the man attempted to leave his wife he would be cut off from his pension and all other privileges.

288. (*Lord Chelmsford.*) Suppose a question of succession should arise out of such a marriage as we have now been contemplating, would the courts hold that that was a valid marriage if the particular law of the country had not been observed with regard to one of the parties?——I do not feel competent to answer that question; I believe no such case has yet arisen.

289. (*Dr. Twiss.*) Probably you are aware that at a British embassy, if one of the parties was a native of the country, they would require with regard to that person that the law of the country were satisfied with regard to publication or notice before they married them?——I am not aware that by British law a mixed marriage of the kind now referred to can be lawfully performed at all at an embassy.

290. We will say the law required that a notice should be given for three weeks; there would be three notices or publications?——I think they required what is called *una fede di nascità*, that is, the certificate of birth, and another declaring that the parties are unmarried, if they could be got from the priest. There will be no difficulty in procuring these now, because there is a change in the law, but formerly it was very difficult to get them from the priest, and it is possible some marriages may have taken place without them, though I cannot say so from any personal knowledge. For my own part I have always felt very nervous about marriages of that sort, except the man were a British subject, in which case the woman immediately acquires her rights also as a British subject in consequence of the marriage. I never would marry an English woman to an Italian man, because I knew perfectly well the Church of Rome would not recognize it as a valid marriage, and he might run away and leave her whenever he liked. There is no such difficulty now, for marriage is now a civil act according to the law of Italy.

291. (*Lord Chelmsford.*) Is there any other matter which occurs to you which it will be useful for the Commission to know on the subject of foreign marriages?——There is one thing which is, perhaps, the sequel of what I have already said. It appears as if it would be very desirable that marriages at the embassy should be put on the same footing as marriages performed at the consulates, that there should be the same proclamation and terms of residence. If there is to be a proclamation at the consulate, and a residence of a month, there should be the same thing with regard to marriages performed at the embassy.

292. Why is it necessary? Has there been any inconvenience found in these marriages before the ambassador or minister in the ambassador's or minister's chapel, because, if not, why should we

throw any impediment in the way of those marriages by requiring residence or proclamation?——I cannot say that I know of any case of actual inconvenience or evil which has arisen from it, but it seems extraordinary that there should be in the same country two laws, or rather two practices, and that the one should altogether annul the other. The one requires residence of a month, the other does not require the residence of a day.

293. (*Mr. Dunlop.*) You think if those precautions were necessary in the one case, they might usefully be required in the other.?——Yes.

294. And if they are useless and not required, they might be dispensed with in the consulate?——Yes.

295. (*Lord Chelmsford.*) Is it not a good principle, especially with regard to marriages, *quieta non movere?*——I am not sure of that.

296. (*Mr. Dunlop.*) Have you not some difficulty with regard to the question whether the ministers of the Free Kirk have a right to marry parties at the embassy?——Yes. The question is whether Scotch clergy have the right of marrying at the embassy or not. In consequence of uncertainty on this point, when a member of my own congregation wished to be married by me at the embassy, I wrote to Lord Normanby, then ambassador at Florence in the Grand Duke's time, and asked him about my right to officiate. He replied, "So far as I am concerned, I shall be "most happy that you should come and marry the "parties, but, with regard to the law, I wish you "would consult friends at home, for I cannot give "you any help on that subject," and there the matter has rested ever since.

297. (*Dr. Twiss.*) May I ask, in regard to the marriages which are solemnized by you at the British consulate, do the parties make use of the solemn declaration in the Act of Parliament?——Yes; I have it written out and make them repeat it.

298. That is not part of the ceremony according to your religious regulations, is it?——We are left in Scotland pretty much to make the marriage address as we like. I always make use of the words presented in the Act when performing the marriage ceremony in Italy.

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299. There would be no doubt that you might solemnize a marriage under the 9th section; "it shall "be lawful for the consul to solemnize or allow to be "solemnized by any other person in his presence?"—— Yes; a clause of the same sort with regard to the embassy would suit all parties. Under this Act the consul is registrar and he keeps the register in which all marriages are inserted; the secretary of legation or one of the attachés to the embassy might act as registrar of the embassy. The difficulty at present is that it is the chaplain of the embassy who keeps the register for those who are married at the embassy. If I marry parties there I would require to have it inserted in the register of my own congregation, as there is no official one at the embassy open to all alike.

300. (*Lord Chelmsford.*) I wish to ask whether in the registration of marriages in Italy there is any transmission of the register or a copy of the register in any way?——Yes, there is from the consulate constantly.

301. To the Foreign Office?——A blank register book is sent to the consul, who, whenever he has filled it up, sends it home to the Foreign Office.

302. Is that register kept at the Foreign Office?—— I understand so. I may, perhaps, be allowed to say that I did not expect to have the honour of being examined here when I came from Italy, otherwise I might have been better prepared on some of the subjects touched on in the course of my examination. Those are the two points, however, to which I was particularly anxious to draw your attention, the one as conferring a benefit on all parties married abroad who have different places of residence, the other conferring a benefit on ministers not belonging to the English Church who are officiating abroad, by allowing them to marry parties at the British embassies as they now do at the consulates.

Adjourned.

Saturday, 17th March 1866.

PRESENT:

Right Hon. The Lord Chelmsford.	Vice-Chancellor Sir William Page Wood.
Right Hon. The Lord Lyveden.	Travers Twiss, Esq., Q.C., D.C.L.
The Right Hon. William Monsell, M.P.	

LORD CHELMSFORD in the Chair.

George Seton, Esq., M.A., Advocate, examined.

G. Seton, Esq., Advocate.

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303. (*Lord Chelmsford.*) I believe you are an advocate of the Scottish bar?——I am; and I am also secretary in the general registry office of births, deaths, and marriages. In accordance with a suggestion made by Mr. Macqueen I have brought a written statement, which I shall read, with your Lordship's permission. It may suggest some questions. Perhaps there are some points into which the Commissioners do not care that I should go; but I have found it necessary to allude to one or two matters with which, no doubt, you are all familiar.

Law of Marriage in Scotland.

I am a member of the Faculty of Advocates, and a Master of Arts of the University of Oxford.

During the past 12 years, in consequence of my official position as secretary in the general registry office of births, deaths, and marriages in Scotland, my attention has been frequently called to various special features in our marriage law.

After mature reflection, I have come to the conclusion that the law is unsatisfactory, chiefly for two reasons:—

I.—The great *variety of modes* in which marriage may be constituted.

II.—The *difficulty* so frequently experienced in the matter of *proof*.

I.—Marriages in Scotland are either regular or irregular, both being equally valid in point of law, and the essential requisite in both kinds being the unconditional consent of the parties *de presenti*.

Persons under puberty cannot, however, consent, but in all other cases the consent of parents or guardians is not required. Perhaps some modification of the law with reference to minors might be desirable. Professor Muirhead suggests* that the right might be conceded to parents and guardians of objecting to the marriage of a child or ward under 20 if a male, and under 17 if a female, where consent to the union had not been obtained. A regular marriage must be preceded by proclamation (*Anglicé* publication) of banns, the ceremony being performed by a clergyman in the presence of at least two credible witnesses. Banns are proclaimed in the church of the parish within which the parties may have resided six weeks previously, either on three several Sundays or three times on one Sunday. In the case of an irregular marriage, the parties, celebrator, and witnesses are all liable to certain penalties, which, however, are now only enforced where a conviction is obtained by the parties with a view to the registration of the marriage, 17 & 18 Vict. c. 80. sects. 48. 49. Irregular marriages, however, may be *uncelebrated*, being constituted by cohabitation, habit and repute, promise followed by *copula*, &c., and may be judicially established by an action of declarator in the Court of Session. In terms of a recent Act, 19 & 20 Vict. c. 96., parties contracting an irregular marriage may, within three months thereafter, obtain a warrant from the sheriff for its registration.

* Notes on the Marriage Laws of England, Scotland, and Ireland, p. 74.

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II.—No difficulty can almost ever occur in connexion with the proof of a regular marriage; but in the case of an irregular marriage the proof is frequently a matter of considerable difficulty. Such proof may be parole or written, by oath of party, by admission, or by a series of facts and circumstances, acknowledgment being inferred from cohabitation and habit and repute. When promise is made after *copula*, it requires to be followed by intercourse in such circumstances as to connect the intercourse with the marriage. Numerous cases relative to the establishment of irregular marriages in Scotland have been before the Court of Session and House of Lords, and the uncertainty of the state of the law upon the subject has almost become a bye word.

Notwithstanding the opinion to the contrary which some persons entertain, I very much incline to believe that, *on the whole*, the Scottish marriage law is unfavourable to morality and productive of illegitimacy. In making this statement, I more particularly refer to that portion of the law, in terms of which a child born before wedlock becomes legitimated by the subsequent marriage of its parents, in accordance with the legal maxims which prevail in France and certain other countries, not, however, including England.

1. This law appears to me to be objectionable on *moral* grounds, inasmuch as it must necessarily encourage what I fear is of very frequent occurrence in "moral and religious "Scotland," to wit, antenuptial fornication. Dr. Strachan, of Dollar, who has paid considerable attention to the subject of illegitimacy and kindred topics, goes the length of saying, in one of his published papers, that "amongst "(Scottish) women of the working class, few or none "preserve their chastity till their marriage."*

2. The law is also objectionable on *social* grounds. A man may pass for a bachelor amongst his friends and the public till the age of 60 or 70, and may suddenly bring forward a wife and ready-made family, such conduct being, of course, not only productive of a large amount of scandal, but also disappointing the fair and reasonable prospects of a brother, a nephew, or other near relative.

3. Finally, the law is objectionable on *international* grounds. For various reasons, including those above stated, there appears to be no prospect of the English adopting the law under consideration; and accordingly, if it is desirable than an assimilation, or at least a near *approximation* should be attained, Scotland, I take it, must give way. At this moment, as everybody must be aware, the son of a man possessing property in both countries may, so far as succession to property is concerned, be legitimate in Scotland and illegitimate in England; or the eldest son of a Scottish landowner, born before marriage, may succeed to his father's Scotch estate, while the second son, born after marriage, is the heir to his English property. In a well-known case, where an English (or rather an Irish) peerage was concerned, the eldest son, though legitimate in Scotland, was merely a commoner, while his younger brother, legitimate in England and Ireland as well as in Scotland, inherited the honours.

As *remedies* and *improvements*, I would venture to recommend in the case of every marriage,—

(1.) Previous publication of some kind, after 21 days' residence in the case of both parties. By the 8th sect. of the English Act, 19 & 20 Vict. c. 119., it is provided that where one of two parties intending to marry without licence is resident in Scotland, a certificate of proclamation in Scotland by the session clerk shall be valid and effectual for authorizing the solemnization of the marriage in England. There is, however, no reciprocal statute; but the usual *practice*, at least in Edinburgh, is to make the proclamation (which of course embraces the name of both) if one of the parties has been resident in the parish for the requisite period of six weeks. This course is frequently adopted where the bridegroom happens to be a soldier or sailor stationed in England or Ireland, of whose due proclamation, however, in his own parish, (or permission to marry by licence,) the officiating clergyman ought to be satisfied.

Where one of the parties happens not to be resident in Scotland, a *special licence* might be granted to such party by the Registrar General, in terms of Lord Advocate Rutherfurd's Marriage Bill of 1849, s. 7, on payment of a *considerable fee*, to be dispensed with in the case of poor persons, such dispensation to endure for a limited period, say 14 days at furthest. The proclamation should be made in the parish church or churches of the parties *after* the clergyman enters the pulpit on *three different Sundays*, and *also* at the door of the registrar's office for 21 days preceding the ceremony, in both cases for a *small, uniform* fee, say 2*s.* 6*d.* This double mode of publication would be preferable to an alternative mode, a uniform system being very desirable.

Advertisement in a newspaper has been suggested as a suitable mode of publication, but, upon the whole, I prefer a notice posted at the door of the registrar's office. It might perhaps be considered advisable to resort to each of the three different modes, viz.:—(1.) Proclamation in church. (2.) Registrar's notice. (3.) Advertisement in one or more newspapers. Such publicity, moreover, would probably act as a check upon bigamy.

(2.) Some kind of ceremony, *in facie ecclesiæ*, either in church or (in accordance with the usual practice in Scotland) in a private house, in terms of the Rutherfurd Bill, s. 2, in the presence of an officiating minister and at least two witnesses (*see also* s. 9, relative to Jews and Quakers,) a schedule being filled up as at present, 17 & 18 Vict. c. 80. s. 46, 24 & 25 Vict. c. 85. s. 15. A specification of religious denominations might perhaps be given in a schedule annexed to any legislative enactment on the subject of marriage. No marriage, however, ought to be regarded as null and void merely because the celebrator assumed a character which he did not possess, unless both parties were privy to such assumption. The officiating clergyman should be required, under a penalty, to intimate the marriage to the registrar, as an additional check against neglected registration.

Although they appear to be increasing, the number of marriages in *England* not in the face of the church is comparatively small. (*See* Table No. I.) Marriage at the office of the registrar would not, I think, be popular in Scotland.

(3.) Every marriage ought to be registered, as at present, within three days after its celebration, under a penalty of 10*l.* Perhaps a heavier penalty, say 20*l.*, might be imposed. In terms of the 47th sect. of the original Scottish Registration Act (17 & 18 Vict. c. 80.) the registrar of the parish or district within which a marriage is to be solemnized may be required to attend with his register book at the place of celebration, the statutory fee for such attendance being 20*s.*, besides a small allowance for travelling. Where this course is resorted to, which it very rarely is, the the marriage is entered at once in the register, which is signed by the parties, officiating minister, and witnesses, without the intervention of the ordinary schedule.

I am not prepared to go the length of saying, what I suppose would please most English lawyers, that registration should be made to supersede all other evidence.

(4.) *All other marriages* ought to be null and void. The number of irregular marriages *registered* in Scotland is very small. I have no doubt a good many irregular marriages take place which are not registered, but I imagine these are not very numerous. Only 164 irregular marriages were registered in Scotland (*see* Table No. II.) during the eight years ending 1862; in other words, a trifle over 20 per annum, the total average annual number of registered marriages being considerably upwards of 20,000 (*see* Table No. III.).

Some very competent judges, who have strong objections to marriage being allowed to be constituted by cohabitation and habit and repute, incline to think that it should continue lawful for two persons to contract a marriage by the interchange of written documents expressive of present consent. Cases might, no doubt, occur where it would be considered desirable to carry out a marriage without the intervention of either publication of banns or a ceremony, but I am of opinion that such cases are so exceptional that it would not be expedient for the Legislature to provide for them.

(5.) I am quite aware of the opinions which many persons entertain with regard to the humane principle which underlies the system of legitimation *per subsequens matrimonium*, which can be traced, I believe, to the days of Constantine the Great, and which other countries besides Scotland have incorporated in their legal codes. *Upon the whole*, however, as already indicated, I think the law of legitimation *per subsequens matrimonium* is objectionable; and I am induced to come to this conclusion by the important consideration that the amendment of the law of marriage ought to be regarded more from an *imperial* than a national point of view, in consequence of the rapidly advancing amalgamation of the three constituent portions of the United Kingdom, to which every possible encouragement ought to be given. The law of England tenaciously holds by the old doctrine of the Parliament of Merton, and, as I have already stated, there is little prospect of the law of legitimation *per subsequens matrimonium* being adopted on the south side of the Tweed.

Generally and finally, considering that marriage affects the *status* of the parties for life, and in most cases materially alters their rights of property, to say nothing of the effects upon third parties and families, I think society is entitled to insist that persons who are about to marry should celebrate the important engagement in an open and

* Address upon Illegitimacy, p. 2.

unequivocal manner, after due compliance with certain simple and uniform preliminaries. The law makes clear and full provision for contracts affecting the sale of houses and lands, horses and dogs, and goods and chattels of every description; and why marriage, the most important of all human contracts, should not be as anxiously defined and provided for, and thus placed beyond the reach of both fraud and doubt, appears to me to be one of the greatest anomalies in the law of a Christian country.

TABLE No. I.

NUMBER of MARRIAGES REGISTERED in ENGLAND during each of the Years 1843, 1853, and 1863

YEAR.	According to the Rites of the Established Church and other Religious Denominations, including Jews and Quakers.	At the Offices of the Superintendent Registrars.	Total No. of Marriages.
1843	121,001	2,817	123,818
1853	156,922	7,598	164,520
1863	159,921	13,589	173,510

TABLE No. II.

NUMBER of IRREGULAR MARRIAGES REGISTERED in SCOTLAND during the Eight Years 1855–1862.

Year.	No.
1855	9
1856	36
1857	7
1858	27
1859	17
1860	16
1861	25
1862	27
Total	164
Average	20

TABLE No. III.

TOTAL NUMBER of MARRIAGES REGISTERED in SCOTLAND during the Eight Years 1855–1862.

Years.	No.
1855	19,680
1856	20,740
1857	21,369
1858	19,655
1859	21,20.
1860	21,225
1861	20,896
1862	20,544
Total	165,310
Average	20,663

304. As far as I have been able to follow you, you seem to think that there should be no other marriages than those which are called regular, that is by a minister of religion?——Quite so.

305. Are not the Scotch very much wedded to their mode of marrying *per verba de presenti*?——They are; but judging from the very small number of irregular marriages which are registered, considering that the number on record is only about 20 per annum out of 20,000, I think that provision need hardly be made for those exceptional cases. No doubt, as I have said, there are a good many not registered which do take place, but I believe they are decreasing.

306. Do you think the Scotch would be willing to relinquish their right to a marriage of that description?——I only judge from the fact that such a very large proportion celebrate their marriages in the face of a church, including, of course, all the dissenting bodies. Although the marriages take place in private houses, as a general rule, still we speak of them as being in the face of the church, inasmuch as a clergyman of some denomination is present.

307. Then what objection would there be in your mind, supposing what we must for the sake of distinction call irregular marriages are to continue, that such a marriage should take place before the registrar?——I cannot say that I have any particular individual objection. It merely appears to me that it is not wanted by my countrymen, judging from their practice. As far as I know these cases are exceptional, and they are becoming more so year after year, although, of course, as your Lordship well knows, the Scotch people do not place any very great weight upon the mere ecclesiastical connection, but still in point of practice, and as a matter of order and propriety, they do marry in the face of the church.

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308. Supposing it to be desirable to obtain a uniformity in the mode of marrying in the three countries, if that be possible, what objection would there be, as now in England the marriage may take place before the registrar, to saying that the Scotch should have an opportunity of marrying in the same way?——Probably there would be no objection to that. Personally I should prefer to see the uniform system to the exclusion of that, on the general ground I before indicated, that I do not think it is wanted except by a very limited number; but I am not prepared to say that there would be any great objection if it were considered desirable on other grounds.

309. (*Lord Lyveden.*) You stated that the Scotch law, in your opinion, was unfavourable to morality and tended to illegitimacy. Will you point out how it tends to illegitimacy?——I think from the circumstance of a woman generally trusting to a subsequent marriage; she frequently surrenders her virtue where otherwise she would not do so.

310. Where the subsequent marriage is not promised, and there is no repute of living together, it does not occur, it would not occur to a woman in that sense?——No, not in that sense.

311. Generally speaking the illegitimate children are those of common people living in bothies and places where they go about for work?——Very frequently where the woman is in a humble position, the man is in a higher position.

312. But there is no prospect of marriage in those cases, is there?——Always a *hope* on the part of the woman, I take it.

313. It has been stated to this Commission that the Scotch law is considered favourable to morality, because there is no inducement to a man to avoid a regular marriage, as an irregular marriage might lead to the same results, and establish the same tie. Do you think there is anything in that argument?——I am aware of that argument, but it appears to me that there is not much in it.

314. You do not think it is practically the case?——I think not.

315. (*Lord Chelmsford.*) I think you said that, with regard to the publication of banns, you would propose not only a publication in the church, but a publication in the registrar's office?——Yes; I said that especially to meet the objection on the part of dissenters, who constantly cry out now that publication in church is a farce. Your Lordship will also observe that I suggested a slight improvement with reference to that mode of publication, viz., that should be after the clergyman goes into the pulpit, in other words, after the congregation assembles. The practice in Scotland, in 19 cases out of 20, is that the precentor in the box under the pulpit reads over the proclamation before half-a-dozen people have come in, and perhaps 10 minutes before the clergyman enters the church; so that, in point of fact, it is not heard by almost any one. I admit that as at present carried out, it is simply useless; but as long as there is an Established Church, I take it there ought to be publication as heretofore. Along with it, as your Lordship suggests, there should also be, by way of additional publication, a notice posted at the office of the registrar of the district for so many days, and that I think would meet the objections of the dissenters. I cannot see how they could object to be also proclaimed in the parish church, if over and above they had what I have suggested. I think it is a constitutional and proper thing to continue the proclamation in church.

316. I think it is very probable that dissenters would object to publication in the church?——I think their objection would be unreasonable.

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317. Why so; because persons who were likely to have an objection to the marriage would be those who would be at the meeting house and not at the church, and therefore it would be a publication which as to them would be merely illusory?——True, but if they have it also at the registrar's office, outside his door, patent to everybody, then I think the case is met. The publication in church would then satisfy the feelings and wishes of what I believe is still the majority of the Scottish population.

318. If publication is necessary, why should not there be publication in their own meeting house and publication at the registry?——I have no objection to that besides.

319. But not publication in the church?——If the parties are dissenters?

320. Yes.——I am not prepared to say that. I stick to the parish church publication tenaciously as one portion of it.

321. (*Dr. Twiss.*) Do you think that ensures the greatest publicity?——Partly that, and partly because I think it is a constitutional arrangement, as long as there is an Established Church, to continue the old time-honoured system. I do not think that even the dissenters, extreme as they are in some of their views, would object to it, if they had the publication at the registrar's office as well.

322. Are the dissenters now in fact married at the parish church?——No. The truth is we have hardly ever a marriage in any church in Scotland; in 99 cases out of 100 they take place in private houses. The only marriages, speaking generally, that take place in church are Episcopalian and Roman Catholic, which, comparatively speaking, are very few in number. Within the last two or three years there have been one or two in churches connected with the Established Church. There is rather a tendency in that direction at present, among other innovations; at least I believe it is a return to the old system, but for many years such a thing has been almost unknown.

323. (*Sir W. P. Wood.*) What is done in the Free Kirk; do they make a publication in the Free Kirk churches?——No.

324. (*Dr. Twiss.*) In the case of a regular marriage solemnized in a private house, does the minister of the parish church attend?——No; it may be any minister, generally it is the minister of the denomination to which the bride belongs.

325. May the minister of a Free Church attend?——Yes, any minister, there is nothing to prevent that.

326. Where would that marriage be registered?——In the district within which the house is situated.

327. At the civil registry?——Yes, our system is precisely the same as to registration as in England, purely civil, and wherever the marriage takes place it is registered in that district, which very often is not the district in which the parties usually reside; but then we have, at the general registry office, a general index for the whole of Scotland, and in five minutes, if you know the year or about the year, any marriage can be found if it is registered.

328. Does the minister who celebrates it register it at all?——No; our clergy have nothing whatever to do, as in England, with the registration of marriages. They sometimes keep a private note of baptisms and burials, and proclamations of banns are, I believe, recorded, but there is no special provision for that, and the sole registration in Scotland since the 1st January 1855 is a purely civil one.

329. (*Sir W. P. Wood.*) Whose duty is it to register the marriage?——The registrar of births and deaths is also the registrar of marriages.

330. Who gives him the information when it takes place in the house?——The parties; the husband, and failing the husband the wife.

331. Is there a penalty?——10*l.*

332. (*Dr. Twiss.*) Then the registrar is not present himself?——No. In connexion with that remark, I may repeat that there is a clause rarely acted upon, in terms of which the registrar may go to the house or the church. He receives a fee of twenty shillings for so doing, so that the marriage may be recorded at once in the register book; but in the large majority of cases the system is this: A schedule is given out to the parties when they produce the evidence of the publication of banns. This schedule they produce at the ceremony or immediately after. They sign it in the presence of the officiating minister, who also signs, along with two witnesses, and within three days the husband, and failing the husband the wife, as I said before, under a penalty of 10*l.*, has to lodge that with the registrar of the district; he then transcribes it into his register; that is the usual course.

333. Does he file the certificate?——He files the schedule, and when our officers called examiners go round at the end of the year to collate the registers, which are all kept in duplicate with a view of one copy being sent to the general registry office, along with that copy he sends up the original schedule, which we bind up in volumes, so that we have the double transcript in the books, the one in the parish and the other in the general registry office, and also in the case of marriages the actual document itself, whereas, in the case of births and deaths, the parties sign in the register, as in England.

334. What record do the parties themselves keep of their marriage?——They get an extract if they think proper either from the local or general register, costing 3*s.* and 1*d.*

335. (*Lord Chelmsford.*) When the ceremony is performed in the church is there any register of it there?——None whatever.

336. It is always the local registrar?——Yes.

337. Does he attend for the purpose, or are the parties obliged under a penalty to communicate it?——The parties are obliged under a penalty to communicate it. He only attends in special cases where the parties choose to send for him. In that case the schedule is superseded, and they sign direct in the book as in England, but such cases are very rare. I do not suppose there are 100 cases annually out of 20,000, probably not 50.

338. (*Dr. Twiss.*) Are we to understand that there is no book of the publication of banns kept in the church?——There is a book of the publication of banns kept by the session clerk, who is the ecclesiastical officer of the kirk session, and very frequently the registrar also, but we have nothing to do with that; in civil registration we take no note of proclamation. The statute merely says that the law of marriage shall so remain as before, and that implies publication of banns; in short the giving out of the schedule for filling up at the marriage depends on the production of the evidence of the proclamation of banns.

339. What evidence is produced?——The parties produce a certificate from the session clerk to the effect that the banns have been proclaimed.

340. (*Sir W. P. Wood.*) And without that they would not have it?——No, the registrar is not allowed to give it without.

341. (*Dr. Twiss.*) The registrar has a book?——Yes, if he happens to be session-clerk, but the registrar-general has no control over that. That is the ecclesiastical part of it, the other is the civil.

342. (*Lord Chelmsford.*) You spoke at the commencement of the information which you have given to us as to parties marrying at the age of puberty without the consent of guardians, what do you call the age of puberty there?——I think 14 in males and 12 in females.

343. Under that is the age of pupillage?——Yes.

344. At 14 and 12 in Scotland a boy and a girl may marry without the consent of parents or guardians?——I believe so.

345. (*Dr. Twiss.*) Do any very youthful marriages take place?——They are not numerous. I believe occasionally, but not frequently, there are such marriages. The Scotch generally marry later in life than the English in all ranks I think.

346. (*Mr. Monsell.*) I do not quite understand why you thought banns should always be published

in the parish church?——Chiefly on the ground that it has always been the custom, and considering that the majority, I believe I may say, of the population still belong to the Established Church, I think it is the natural place, as the *commune forum* of the parish.

347. I suppose the object of banns is publicity?——It is.

348. Would not there be more real and effectual publicity obtained by having the banns published in the church or chapel, or whatever it was, which the parties were in the habit of attending?——I think there would.

349. Would not the object of publicity be better attained by making that change?——I think it would; but I would go the length of saying, let it be there also.

350. (*Lord Chelmsford.*) Do you think it would be palatable to the members of the Free Kirk that they should be required to have the publication of their banns in that way?——I dare say it would not be palatable.

351. Would it be right to impose it upon them if it is not very likely that a publication in that particular church will be of any advantage in giving notice to the parties who would be interested in knowing the fact?——I think it would give notice to a very large number of people. I think their objection is unreasonable if they get publication where they wish it, and if, as I propose, over and above that, the old system of publishing in the parish church should continue, I cannot see that their objection is at least a reasonable one. I said just now that it would be unpalatable, but I do not know that it would. There are some extreme Free Churchmen who, I suppose, would not walk into a parish church to save their lives. I think such objections are simply ludicrous.

352. (*Sir W. P. Wood.*) You spoke of publication outside the registry; there is nothing of that kind now I suppose?——No.

353. I do not know whether you are aware that in England a great deal of objection was made at one time to the outdoor publication. There was a period when the publication was required to be put outside the doors of the parish church. I do not know whether there would be any feeling of annoyance on the part of persons about to be married at having their names exposed outside?——I have not thought of that. I cannot imagine that there would be. I was not aware of the objection in England. It is possible, but I can hardly fancy it. I do not think it is an objection worthy of notice, as far as I can estimate the matter.

354. (*Lord Chelmsford.*) Have you thought at all whether any alteration could be made in the marriages of minors?——I cannot say I have thought much about it. It was just an off-hand suggestion, that I inserted. It appeared to me desirable that something of the kind should be considered, and I merely put it in as having occurred to me. I am not prepared to make any specific suggestion.

355. Is that one of the rights of freedom which you think the Scotch would insist upon, that boys of 14 and girls of 12 should be left free?——No, I do not think they would. I do not think intelligent Scotchmen or Scotchwomen would insist upon it.

356. (*Dr. Twiss.*) It is stated that the number of irregular marriages only amounts to 20 per annum?——Registered; that is all we can speak to with certainty. I have already said in my paper that I had reason to believe a good many more take place of which we hear nothing, but I do not think they are very numerous. I believe they have decreased.

357. How are these irregular marriages registered?——They are only registered if the parties go before a magistrate and get convicted of a *quasi* criminal offence. The magistrate then fills up a schedule which comes in place of the marriage schedule in a regular marriage, and on that being presented to the registrar he records it. In short, there must be a document as in the case of a regular marriage. If the parties do not get convicted, they cannot go to the registrar and simply say "Will you record this marriage." There must be the document following the formal conviction of the magistrate.

358. (*Lord Chelmsford.*) Does that take place now?——Occasionally it does; in fact the 20 per annum I alluded to are chiefly of that kind. A few of them are cases where the sheriff, within three months, grants a warrant under Lord Brougham's Act, the later statute; the others are under the original Registration Act of 1854.

359. (*Lord Lyveden.*) Do you think the majority of people in Scotland, of all classes, educated as well as uneducated, are so decidedly attached to their system of marriage as to make any alteration of it by legislation very unpopular?——I should say not.

360. (*Sir W. P. Wood.*) I do not know whether you have considered the question which has been referred to by one gentleman who has been kind enough to communicate with us, whether or not the period of residence in Scotland ought to be shortened before the banns can be published. At present it seems to be required that there should be six weeks previous residence, and one gentleman has stated his opinion that that is an unreasonably long period, regard being had now to the rapid locomotion of people in general, and the frequently occurring case of persons who are desirous of marrying before going to India, and otherwise, in a shorter period of time?——Those cases would be met by my proposal that the registrar-general should grant a licence. I take it that in the large majority of cases even six weeks is not too long for so important a thing.

361. You propose that the registrar-general should have the power of granting a licence shortening the time?——In special cases. We frequently have cases where the bridegroom is a soldier or sailor; in these cases I would propose, as in Lord Rutherfurd's Bill, that some officer, such as the registrar-general, should grant them.

362. For reasons assigned?——Just so.

363. (*Lord Chelmsford.*) There is no system of licensing in Scotland at present, is there?——No.

364. The regular marriage must be by publication of banns?——Just so.

365. And the banns are required to be published for three Sundays successively, but in general that is dispensed with, and they are published three times on the same Sunday?——It is so. With reference to that I may mention that the fees vary very much. In some places, such as Glasgow and other large towns, they are very large, amounting to 15*s.*, 20*s.*, and a guinea, which I believe the poor complain of, and with great reason. Hence I suggest that a small uniform fee (in both instances I venture to say half-a-crown,) should be charged. I think that would be a very popular and judicious arrangement. I have heard a great many complaints about that matter during the last 10 or 12 years from all quarters and I think with good reason.

366. (*Sir W. P. Wood.*) There appears to be this curious discrepancy, Lord Brougham's Act provides that persons can only avail themselves of the Scottish marriage when one of the parties has resided three weeks in Scotland previous to contracting the marriage; then, as the the same gentleman observes, as a bridegroom must be six weeks before he can have his banns published, it is a sort of premium on irregular marriages, because he can only marry irregularly in three weeks?——That is quite true. The licence meets the case of those people who are in a great hurry. We have had a good many cases of that sort, where there is a hardship and a difficulty—*bonâ fide* cases of hardship and difficulty.

367. (*Dr. Twiss.*) Is it the fact that for a regular marriage a person must have resided six weeks previously to the publication of his banns in the parish?——Yes, that is the strict ecclesiastical law on the subject.

368. So that, in fact, he would have to reside altogether nine weeks in the parish before he could be married?——No.

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369. There must be six weeks before publication?——No, six weeks before marriage.

370. It says here that at present a person cannot have the banns of marriage proclaimed, and of course cannot be married regularly, unless he has resided for the six previous weeks in the parish where the banns are to be published?——Yes.

371. (*Sir W. P. Wood.*) Is that correct; must he have been six weeks in the parish before he can put up the banns?——If he has resided six weeks ending on a Saturday, he may be proclaimed on the following Sunday, and married on Monday morning.

372. (*Dr. Twiss.*) But there must be three publications?——No, they may be published all at once.

373. (*Lord Chelmsford.*) You must take that as a publication for three Sundays?——Yes, I suppose it might come to this, that there would be nine weeks in those cases.

374. In the case of persons who would desire to have banns published regularly and not huddled into one Sunday it would extend to nine weeks?——Yes, I suppose the strict law would be six weeks' residence before publication, and three more weeks might elapse before marriage.

375. (*Dr. Twiss.*) Is not that, considering the locomotive propensities or habits of the people, rather severe?——Looking to that, which I did not think of before, I would take leave to modify the statement I made, and say that the period of six weeks might be shortened.

376. (*Sir W. P. Wood.*) Perhaps three weeks would be reasonable?——Yes, I think so.

377. (*Lord Lyveden.*) How do they get over the publication of the three on one Sunday?——By paying a larger fee.

378. That legalizes it?——It is the practice. The Church would shake its head, I suppose.

379. Suppose anybody took notice of it, would it not affect the marriage?——I think not. The fact is, it has been the custom for years. It is not the strict Church law, but it is a frequent practice, particularly among the wealthier classes.

380. (*Lord Chelmsford.*) I suppose they suspend the "Standing Orders"?——Yes.

381. (*Sir W. P. Wood.*) The minister signs the schedule in all cases?——Yes, and not less than two witnesses.

382. Would there be any objection to making the minister a sort of sub-registrar in all cases, so as to make him an officer of your office, and require him to sign it?——Instead of the parties do you mean?

383. Yes; making the minister present a sub-registrar, whose duty it would be immediately to transmit it?——In some respects I should rather like that arrangement, because in the case of the poorer ranks the schedule is sometimes forgotten and kept for weeks or months. We have had cases of parties going away suddenly to America, without transmitting the Schedule.

384. It would be necessary to register the several ministers. You would have the names of the several ministers at your office qualified to act as sub-registrars?——I do not know that that would be necessary.

385. Do you think on the whole it might be beneficial?——I said in my written statement that I think it might be desirable, over and above the present arrangements, that the minister should be required to certify the fact of marriage, so that if the parties failed to do so, the registrar might apply to them, as in the case of deaths. A medical man has to send a certificate, under a penalty, as to the cause of death, and very often the registrar finds out the fact of a death through the medium of the certificate as to its cause. I think it would be a very wholesome regulation, but perhaps the mode you suggested might be better, to take the responsibility of transmitting the schedule off the parties and throw it on the clergyman. I think on the whole, however, what I said before would be better, to leave it to the parties as at present, but to have the clergyman's intimation in addition.

386. (*Dr. Twiss.*) As a matter of fact do you think the parties are always aware, particularly the poorer classes, that they are bound under a penalty of 10*l.* to send them?——I think now it is all but universally known.

387. Is it printed upon the certificate?——Yes, the 46th section of the statute is printed at the foot of the schedule, and when the statute came into operation the registrar-general took every means in his power to make it known. I should say that the law is extremely well known now, and works uncommonly well.

388. When the schedule is issued from the office is there any check kept whereby you know that you have issued the schedule?——No.

389. How are you likely then to be able to enforce the penalty? You do not know whether the man has been married or not?——If the parties get the schedule, say, in a parish in Mid-Lothian, and go away and get married at Inverness there is a difficulty; there is merely the penalty for failing to send it to the registrar of Inverness.

390. Are you aware of any cases where the penalty has been enforced?——In a few cases only.

391. Within your experience?——Yes; only in a few cases. I think I should have heard if there had been many. At the commencement of the Act most sheriffs (who have a sort of general charge of registration within their counties, although they practically do not much interfere) thought it desirable to make a few examples, and where parties failed to report deaths or births, or to register marriages, there were a few prosecutions; but the general tendency has been to work the statute in a lenient way, and not to resort to prosecutions except where there was evident intention and wilfulness on the part of the parties.

392. You have no means in your practical machinery of checking the marriages?——No, we have not.

393. Supposing that the schedule is not returned to you, have you any record that a schedule has been issued?——No, we have not. A careful registrar might, perhaps, keep a note of the fact that he had given a schedule to A. B. and C. D., but there is no regulation requiring him to do so, and in point of practice I do not think Registrars do so.

394. Are your schedules numbered?——They are numbered with reference to the register in which they are engrossed.

395. That is afterwards?——Yes.

396. But not before?——Not before. The registrar who issues the schedule is required to put his name and the date on the back of it, so that where he attends to that instruction, which he generally does, one can always see where a schedule has been issued. It may be issued in a parish in the neighbourhood of Edinburgh and the parties may get married at Aberdeen. They hand it in to the registrar of Aberdeen, because the invariable rule is that the marriage is recorded where it takes place.

397. If you were called upon to make a report as to the operation of that statute, whether it was observed or not as to the registration or return of the schedules, you could not make any return?——No, we could not. That is a point which perhaps might be kept in view with an eye to amendment.

398. There would be no difficulty, I suspect, in arranging matters so that you would know that the schedule had been issued and not returned?——I think not. There might perhaps be some sort of check in terms of which the different registrars might communicate with one another in some way.

399. You probably file the report or whatever it may be of the session clerk as to the publication of banns?——No, the parties take that away with them. They merely produce it, and on the strength of the production they get a marriage schedule from the registrar.

400. You have no record whatever unless the schedule comes back to you that there has been a marriage or intended marriage?——None whatever. There is a record of the intended marriage, if a

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...ord is kept of the proclamation of banns, which ...done in most parishes, but the registrar-general has ...o control over it.

401. Has the session clerk any means of recording ...n he has sent or made the publication? Can he ...k to that?——Yes.

402. From a book?——Yes, I think, as a rule, he ...p a record of that.

403. After he has given a certificate?——Yes, after ...e parties have been proclaimed.

404. And after he has given a certificate?——Yes; ...short, our old registers, that is to say, the re...isters kept before the Act of 1854, are registers ...f publication of banns and not of marriage in a ...ery large number of cases; they set forth that ...A.B. and C.D. were proclaimed with a view to ...arriage, and sometimes it is added "and were ...afterwards married." I can say from giving fre...quently a very large number of extracts that the ...egister bears that the parties were merely pro...laimed, so that it is only a presumption that they ...ere married. Since the Registration Act of 1854 ...ame into operation I think the General Assembly of ...he Church of Scotland issued an order that the ...ession clerk should keep a register of proclamation ...f banns. I am not prepared to say that it is ...niversally attended to. I think it is pretty well ...ttended to, and I should say that in most cases ...vidence could be obtained of the proclamation from ...hat record.

405. In regard to the schedule which you issue, is ...he church where they are to be married designated ...n the schedule?——In the first column it bears this, ...—1866. 10th March. After banns according to the ...forms of . . . . ," then, if the parties belong to ...the Established Church, they insert the Established ...Church of Scotland," or whatever denomination it ...nay be. That is always filled in, and from that ...statement we can make out in a loose way, and in ...some of our reports we give an approximation to, the ...number of adherents to the different churches.

406. I mean are the parties obliged to marry in a ...particular place?——No, they may marry anywhere.

407. (*Sir W. P. Wood.*) You said just now that ...parties might take out the schedule in Mid-Lothian ...and be married in Inverness?——Yes; what I mean ...is this, that the clergyman generally sees to the deno...mination being specified, United Presbyterian, or ...Free Church, or whatever it is. This is the form:— ..." 1866, 3rd March, at 4 Hamilton square, Edinburgh, ..." after banns according to the forms of the . . . . . ;" ...then the parties fill in "Established Church of Scot...land," "Episcopal Church," &c., as the case may be.

408. (*Dr. Twiss.*) Is there anything which would ...enable you, supposing parties produced a schedule of this sort filled up which was a forgery, to detect that in any way?——We have various clauses imposing heavy penalties.

409. Have you any means of saying that you never issued that schedule from your office?——The registrar, by an amendment statute, 24 & 25 Vict. c. 85., is required to assist the parties in filling up the schedule, and in the large majority of cases he does so fill up certain parts, leaving only the columns that have to be signed unfilled, so that I should say in a very large number of cases, if the schedule was not partly filled up by the registrar who issued it, there would be a suspicion attached to it, although no doubt there might be cases where parties get hold of the schedule otherwise. They may also get it through the clergyman. I think in terms of the original registration Act the clergyman may procure a small supply of schedules for emergencies.

410. (*Sir. W. P. Wood.*) As a security against any such accident, would it not be an advantage to require the officiating minister to transmit it?——I think in that way it might work very well.

411. (*Dr. Twiss.*) Is the original document of itself evidence before it is registered with you?——No, our Act declares that an extract of the marriage from the register is sufficient, and if there is anything suspicious or irregular about the entry in the book, we have the original schedule to fall back upon. These schedules are carefully compared by our district examiners. They detect inaccuracies and are authorized to correct clerical errors.

412. If it were brought about that all the parties were dead except the man and his wife, and you were asked to register it, you would do so?——Yes, provided a properly signed schedule was produced. We had a case very lately in Glasgow where the parties neglected for seven or eight years to transmit the schedule. The clergyman was dead. It was believed that the document was among some of his papers. He had carried it away at the marriage and forgot to transmit it. Very careful search was made, but it could not be found. There were accordingly no means, as far as we could see, by which that marriage could be registered; the clergyman was dead and the schedule could not be found, and without the clergyman's signature there were no means of getting it into the register. That, of course, is a very exceptional case. We consider the system of registration of marriage as, in some respects, the loosest part of the whole, that is to say, parties do not come to the registrar as they always do in the case of births and deaths. There is the intermediate schedule, which is of course objectionable; but then the system which has so long prevailed in Scotland of parties marrying in private houses and not in church makes that a practical difficulty.

Saturday, 14th April 1866.

PRESENT:

The Right Hon. The Lord Chelmsford.	Vice-Chancellor Sir W. P. Wood.
The Right Hon. The Lord Naas.	The Attorney General.
The Right Hon. The Lord Lyveden.	The Solicitor General for Scotland.
The Right Hon. William Monsell, M.P.	Travers Twiss, Esq., Q.C., D.C.L.
The Right Hon. Mr. Justice O'Hagan.	Alexander Murray Dunlop, Esq., M.P.

LORD CHELMSFORD in the Chair.

The Right Reverend Bishop Moriarty examined.

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413. (*Lord Chelmsford.*) I am sure you will permit me to express the obligation under which the Commissioners feel for your kindness in attending here to give us the information you possess on a subject of very general interest. I do not know whether it would be more convenient to you to state anything at the outset with which you desire the Commission should be acquainted or whether you would wish to wait until questions are put to you?——Mr. Justice O'Hagan has informed me that the principal matters concerning which you wish to get information from me are the working of the present system of registration in Ireland, the advisability of change, and the different modes of registration that have been proposed. We may, perhaps, first consider the different methods which have been proposed for some time past for the registration of Catholic marriages in Ireland. A few years ago Lord Naas, when he was secretary for Ireland, and subsequently Mr. Cardwell, brought forward measures which were, I believe, nearly identical. The parish priest or the priest celebrating the marriage would become the

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registrar, his certificate being received as evidence of the marriage, and he being bound to register under a penalty. I considered at the time that the measures thus brought forward were framed with the very best spirit and with the most scrupulous respect to the rights of the Catholic priesthood. They left us full jurisdiction over marriage, made us judges of the law as well as witnesses of the fact. They did not interfere with the contract; allowed us to register it, and received our registration as evidence of it. However, this system was not accepted by us for reasons which I shall state. In the first place it was thought that it would be the beginning of an official connexion between the Catholic church in Ireland and the State, and as such a connexion was not deemed desirable under the circumstances it was not deemed advisable to begin it. That there would be some connexion was evident, because the clergyman would become the paid and the obliged official of the State as far as the registration of marriage was concerned. Secondly, the clergy in Ireland have no glebe houses, no parsonages; they have consequently no office, no fixed official residence, and therefore, although they may be ever so particular in making the registry when the marriage occurs, there is no guarantee for the preservation of the registry books. I have myself had experience of this. Our clergy are bound to register every marriage by the law of the Church, and although they are, I am sure, very exact in doing so, yet I find that on the death of a parish priest, as there is no succession either in his person or property acknowledged by the law, his parochial books may disappear along with the rest of his property. The incoming priest takes up another residence, and in many instances where registers have been carefully kept they have been lost.

414. Is the registry kept by the parish priest?—— Every parish priest is strictly bound, under pain of grievous sin, to make a registry of every marriage he celebrates.

415. Is there any general registry to which the particular register, which is kept by the parish priest, is ultimately sent?——No; in France the parish priests are obliged to send their register to the bishops, or a duplicate thereof. This is not done in Ireland. For the reasons I have stated, and perhaps for others that might have influenced other persons, the measures proposed by Lord Naas and Mr. Cardwell were not accepted. The next system we may mention is that adopted here in England, where a civil registrar attends and is present at the marriage performed by a Catholic priest. I have had no experience of it, but I have heard several priests and laymen in this country speak of it as inconvenient. They say that it is not often easy to get the registrar to attend at the appointed hour. I was told of a marriage which had been got up with some *eclat*, a number of persons were invited, and all the company were assembled; they were obliged to leave and put off the marriage until the next day on account of the nonattendance of the registrar. Whenever there are two concurrent jurisdictions and authorities it is not always easy to get them to act harmoniously. Again, I believe, it is sometimes found to be offensive; if the registrar does not wish to be polite he can make his presence disagreeable. In my part of Ireland it would be very difficult to manage such a system, because nearly all our marriages take place within a very short period of the year, generally between Advent and Lent, in Shrovetide; during that time several marriages may be celebrated in each parish church on the same day, so that unless there was a registrar attached to each church I do not think the system could work. The next system that we might contemplate, and it is the only one which could effect the object which I think this Commission has in view, namely, a complete uniformity in the law of marriage, is the system adopted in France; and I believe, wherever the *Code Napoleon* is received as the law, namely, the *marriage civil*, the parties being obliged to contract in the first instance before an appointed civil officer, such contract being necessary and sufficient for all the purposes of the State and of the law, it being free to the parties after such contract to receive the nuptial benediction from the clergyman of their choice, and again contract before him. I suppose that in a country where there are so many different religions, and some people who have no religion, this is the only system that could possibly give us a complete uniformity; but then, I must say, that it would be very imprudent to introduce the system into Ireland, and I think that it would be quite impossible to give it effect there. My reason for saying so is, that we should think it our duty to oppose it, and I am quite sure that our resistance would be effectual. We should oppose it in the first place because we consider that the tendency of that system is to withdraw marriage from the guardianship of religion, and we know that Christian marriage is the basis of the Christian family and of Christian society. We have experience of this result in France, where there are many people, thousands I suppose, who have contracted merely before the civil officer, who have never contracted before the clergyman, whose marriages therefore are held in conscience and by the law of the church to be invalid, and who are therefore living in a state of concubinage. Consequently we should *in limine* prevent the introduction of a system which we consider to be fraught with so much evil. In the next place, we hold, as a matter of decided doctrine, that all ecclesiastical causes belong exclusively to the *forum ecclesiæ*. I am not going to prove our claim, but for the purposes of my argument the assumption is stronger than proof. We of course allow that the State has the right to legislate for the civil effects of marriage. We allow that the State can legislate on all questions concerning dowry, concerning joint or several ownership of property by the husband and wife, concerning the transmission of the inheritance to the children, and therefore the State has the right to see that the marriage should be registered. We also allow that the State can make laws in certain circumstances prohibiting the marriage of certain classes of persons, as of soldiers or police for instance not preventing them perpetually, much less invalidating them. The State may also lawfully prohibit the marriage of minors unless with the consent of parents. All prohibitory laws of that kind are within the jurisdiction of the State, but all the questions that affect the essence of marriage as to who can or cannot contract marriage, whose marriage is valid or invalid, who may or who may not be separated *quoad vinculum* or *quoad thorum et habitationem*. All those questions we consider belong solely to our cognizance and jurisdiction. Now, if I suppose civil marriage introduced into Ireland, parties may get married before the civil officer who are under inability by some diriment impediment, either of kindred or of affinity, or who may have made religious vows, or may be in holy orders, or persons whose first wife may be yet living, but who may have been divorced in your courts; in such cases if these parties contracted before the civil officer then we should either dispense universally and give up the law of the church altogether,* or we should leave them in a state of concubinage, or they should separate, risking all the consequences. These inconveniences are so great that they would render it, to say the least, very imprudent to propose any such measure. All these reasons are strengthened by the fact that the law of Trent, which is commonly known as the Chapter *Tametsi* of the Council of Trent, is published in Ireland, and by that law all marriages are null and void unless contracted before the parish priest and two witnesses, or another priest sanctioned by him or the ordinary. The consequences of civil marriage would therefore be, that the opposition between law and conscience, the oppo

* In the case of divorce, *a vinculo*, by the State, where the first marriage is valid we have no power to dispense.

-ition between Church and State would be universal; it would affect every marriage, for the parties contracting before the civil officer would be contracting a clandestine marriage, and we should hold them excommunicated or liable to excommunication; and, on the other hand, the parties contracting before us, and not contracting before the civil officer, would be held to have contracted an invalid marriage in the eyes of the civil law; this would affect every marriage contracted in Ireland. It may be fairly asked how it is that, in France and other Catholic countries, the clergy submit to such a law. To that I answer, in the first place, that the clergy never considered the law of civil marriage binding in conscience; they tolerate it as an evil, but they do not approve of it. The present Cardinal Archbishop of Rheims declares that the law does not bind either the priest or the layman in conscience, but then, in order to guard against the inconveniences to which the contracting parties might be subjected, the clergyman is directed never to celebrate the marriage unless he gets the certificate of the civil officer certifying that they have already contracted; they do that as a matter of prudence and for the protection of the parties, but they have always considered the civil marriage an unwarrantable assumption of power by the State and a most demoralizing system. In France the contract *in facie ecclesiæ* is required for the validity of the marriage, and therefore those who are content with the contract before the civil officer are living in concubinage. In the next place I answer, that the position of the clergy in those countries is very different from ours; they have civil rights; they are connected with the State, and supported by the State, and they must succumb to the necessities of their position; they deem it more prudent to tolerate the evil, though they do not approve. With us the case is altogether different; as ecclesiastics we have no civil rights: our existence is ignored by the law. We see our rights as well as our property transferred to others, and, consequently, there is no reason why we should yield to a law which should prejudice our spiritual jurisdiction. I am quite sure that if such a measure were introduced, the bishops and clergy of Ireland would deem it their duty to preach resistance to it; and I need not tell the Commission that, as our people obey us when we tell them to be submissive to the law, we should find them exceedingly docile if we told them they were conscientiously bound to resist it.

416. Your lordship at present has been opposing the idea of converting the relation of marriage into a mere civil contract, and your observations have been directed to that point?——Yes; it is said by those who are favourable to that system that it is free for every one to go before the clergyman after he has contracted civil marriage; but I need not observe that when such a contract before the civil officer is necessary, and when that contract is sufficient for the exigencies of the law and society, there will be found parties to be content with it; some, perhaps, from disbelief in the necessity of any further contract, some who would wish to legalize before society an unlawful union, and some, perhaps, in order to have the liberty of again contracting with another party.

417. You have favoured the Commission with your observations with regard to the registration of marriage after it has taken place, and you have stated various objections that you had to the systems which had been proposed. What we very much want to ascertain, if possible, is whether there could be an uniformity established by a system of registration prior to the marriage, without at all interfering with the religious character and obligation of the relation?——I do not think that it is possible; for I cannot conceive any system on which it could be done except that against which I have just been arguing.

418. For instance, supposing that in the first instance an application was to be made to the priest or to whoever was to perform the religious ceremony for a certificate, and the marriage was not to take place until that certificate had been obtained, would there be any objection to a course of that kind?——Such certificate to be presented?

419. Such certificate to be presented as a voucher?——There is no doubt that that would meet some of the objections that I have put forward, because the priest would not give such a certificate until he had ascertained whether there was any impediment that could in the eyes of the Church prevent the marriage; yet it would necessitate the appearance of the parties before a civil officer prior to the contract of marriage.

420. No, that is not so?——Then to whom should he present that certificate?

421. He should obtain the certificate from the priest of what is afterwards to be registered before the marriage can take place?——Then must he not present a certificate to the civil officer before the marriage takes place?

422. No, not before the marriage takes place; after the marriage takes place it may be registered?——I cannot precisely see how that system differs essentially from the one now in force in Ireland. According to the present system in Ireland, as soon as the marriage takes place a certificate is filled up by the priest, and that certificate is handed to the registrar, who is now the dispensary doctor. There was a question at the time, I believe, as to whether it ought to be the clerk of the Poor Law Union, the police officer, or the dispensary doctor. The dispensary doctor was preferred inasmuch as he has particular facilities for the registration of births and deaths, which it is convenient to have registered by the same person. But according to our present system, as soon as the marriage is performed in the Church, the priest fills up the certificate according to the prescribed form, signed by the parties and the witnesses, and then the married parties go directly, or within a few days, to the doctor and hand in their certificate, or the priest undertakes to do it for them. In my own town we keep the certificates ourselves after they are filled, and we hand them over when we have perhaps 10 or 12 together to the dispensary doctor, believing that it is safer to do so. In other places, and I should think more generally, the parties themselves take the certificate to the dispensary doctor, and it is registered by him. That was the measure introduced by Mr. Monsell, and it is now in full operation throughout Ireland. I can answer for my own diocese that it is working most satisfactorily. It may appear a little complex at first, because the parties find some trouble in going to the dispensary doctor after having been with us, and some of them may not be fully impressed with the advantage or necessity of doing so; but I have found that people are becoming very particular on the subject. The American war caused them to see the advantage of it. During the course of the war there were constant demands for certificates of birth, in order to prove exemption from service in America; and since the close of the American war there are every day demands for certificates of marriage, in order to prove the rights of the widows to the pensions or allowances which are given to them in consequence of the deaths of their husbands. This proves to the people the advantage of registration, and they are, therefore, more anxious to get their marriage certificate and take it to the registrar.

423. Is there any previous publication of the intention of the parties to marry?——According to the law of the Church banns ought to be published on three successive Sundays or holydays, and that law is observed in some parts of Ireland; but I must say that it is generally dispensed with, especially in the south of Ireland, and the marriages are for the most part celebrated by licence.

424. Who gives the licence?——I give it myself, and also the vicars of the diocese. I regret it, but still it is the fact that the banns are most generally dispensed with. In my part of the country the people have a great objection to hear their banns called in church. It would be to them also an inconvenience, for they make and break their matches so quickly

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that three weeks delay would be likely to unsettle their arrangements.

425. Will you allow me to ask what is necessary before a licence can be obtained?——In all cases the parties about to be married come before the parish priest accompanied by their friends or relatives. The parish priest must then make a strict inquiry as to their ability to marry; whether there exists any impediment; whether they are free to marry; whether there is any pre-contract, either previous marriage or promise of marriage. Then there are inquiries also whether they have a sufficient knowledge of the Christian doctrine, and inquiry is made not only *in foro externo* but *in foro interno*, for the parties are obliged to go to confession previous to marriage, and the priest can examine them *in foro conscientiæ*. Of course he cannot use any knowledge thus acquired except for the purpose of advising the parties when he hears their confession. Those precautions are always taken by the priest, and we find that they are sufficient, at least in our country parishes.

426. When the parties proceed to ask for a licence do they bring in a certificate from the priest that that examination has taken place?——Yes; they always bring to me or to the vicar a certificate that they are free to marry, which supposes the previous examination.

427. (*Sir W. P. Wood.*) If they appear manifestly under age should you ask them any question on that subject?——Certainly; and we should consider it a very grievous wrong to marry any person under age without the consent of the parents. There are cases in which I would undertake to dispense with them. If I found, for instance, that a young person had been seduced, and that she was in imminent danger of losing her character, and if she confided such secret to me or to her parish clergyman, I would do all in my power to obtain the father's consent to the marriage; but if he refused I might probably allow the marriage to go on without the parents' consent, especially in those cases where I know there can be no consequences as to property or fortune, where they have nothing to lose but their character.

428. Would you take notice of their being strangers or not being known to you in any way?——Certainly; the law of the Council of Trent provides for that. No person can marry validly in our church unless in the presence of their parish priest, and that is the parish priest of their own domicile or *quasi* domicile.

429. (*Lord Chelmsford.*) Do the bishops or the vicars see the parties applying for the licence, or do they trust to the certificate of the priest that everything is right?——In many cases the parties to be married do not themselves come to apply for the licence, but they send some member of the family, who brings the certificate of the priest that all is right. I must say that during the 12 years that I have been bishop over some 200,000 Catholics I have found very few cases where marriage was entered into with any impediment that should be taken cognizance of. In a large city the publication of banns may be necessary, but in a country district all the parishioners are known to each other. The intention of getting married is known generally throughout the parish; the parties are all known to the priest, so that if there is an impediment, or a previous promise of marriage, there would be reclamation, even though no banns were published in the church. It comes sufficiently to the knowledge of all the parties.

430. In the great majority of cases I suppose the parish priest who has made the previous examination would be the priest who officiates at the religious ceremony of marriage?——The parish priest or his curate.

431. Somebody authorized by him?——Yes. It may happen that the parties belong to different parishes; in that case a young man leaving his parish, gets a certificate from his parish priest, stating so and so "*liber est ad contractandum matrimonium cum*" so and so, provided there is no impediment in the way, and then it will belong to the other priest to make an examination with regard to his parishioner.

432. At present where is the general registry of marriages under the last Act of Parliament?——In Dublin.

433. After a marriage has been celebrated there is a certificate of it, I suppose, which is transmitted to the registry of Dublin?——The certificate of marriage is transmitted by us or by the parties married to the dispensary doctor. He keeps a duplicate register, and, as well as I remember the provisions of the Act, every half-year the Registrar-General gets his books, at least one of the duplicate registers, and the other is kept in the office, which is in the union workhouse of the district.

434. What objection can there be to this course, that when the priest has received the licence from the bishop or the vicar for the persons to marry, he should make an entry, which would be in fact the same sort of entry which he now makes after the marriage, and transmit that to the registrar, only making it before, and being in fact the certificate of the marriage?——A certificate should certify that the marriage had taken place, and a certificate before marriage would be a falsehood.

435. (*Mr. Justice O'Hagan.*) Would you require to have an accumulative certificate, one after as well as before?——I have known people to break off when on their knees to be married.

436. (*Lord Chelmsford.*) The certificate would not then be transmitted?——It should not be transmitted until after marriage.

437. I do not propose that it should be transmitted until after marriage, simply that it should be made beforehand?——I can really see no difference whatever between making the certificate in the sacristy before the parties go to the altar and making it after, provided that it is not sent until after the marriage.

438. (*The Attorney General.*) As to what you have said with reference to the frequency of the cases in which the parties do not adhere to their first purpose, I suppose in those cases it would be pre-contract unless both agreed to part?——Yes, if in addition to the purpose there had been promise.

439. In every case in which the bishop or the clergyman knew that there had been a promise of marriage not retracted by mutual consent, that would be regarded as an impediment?——Yes; but when we say, "unless retracted by mutual consent," we must remember that this is not the only case in which a pre-contract might be vitiated, because, following the ordinary rules of contracts, if there is a change of circumstances sufficient to justify one party in receding from the contract, it would not be necessary to have mutual consent.

440. I would not of course trouble you to state all the cases?——They are the ordinary cases in which, according to the common rules of justice, contracts are annulled.

441. Supposing this case of a promise of marriage on the footing of which the parties had contracted a marriage not in *facie ecclesiæ*, in a manner recognised as legal by the law of the land. Persons, I assume, not under impediment which would make marriage between them impossible by your law, I presume that would be recognized as a pre-contract constituting an impediment?——It would not. It is decided that a clandestine marriage is not equivalent to a pre-contract, or to *sponsalia*, except that it renders either of the parties incapable of contracting with the relations of the other. A question would arise as to the prudence of allowing them to break such a contract, and in general we should not deem it a very prudent thing when they were married before the law, to separate them, and to allow them to enter into another marriage. I speak now of the cases that might occur; for instance, the registrar of a district has power at present to marry *coram lege civili*. When such marriages take place in opposition to our advice, we separate the parties for a time, and, after they have done

penance and been relieved from the excommunication, we generally marry them.

442. As I understand, the same parties would be recognized as under an impediment by virtue of the engagement or promise of marriage which preceded what I will call their civil marriage. In that state of things would you think that the subsequent solemnization of a civil marriage would dissolve an impediment which existed before it by virtue of other engagements?——No; but there might be no evidence of any previous engagement, except the solemnization before the registrar, and such solemnization being unlawful and done in disobedience to the church, we would not give to the act a legal value or binding power, except in as far as I stated before.

443. As I understand you, if there was no evidence of any pre-contract but that, it would be consistent with the principles of the Church to decline to recognize that as constituting an impediment?——Yes.

444. But if there was evidence of an earlier contract that impediment would not be dissolved by the solemnization of such a marriage?——If the parties had promised marriage to each other, the subsequent act by which they contracted a clandestine marriage would not relieve them from the *sponsalia* which they had previously contracted.

445. In the other case I understand you to say that, as a matter of strict discipline, the law of the Church would not bind you to take any notice whatever of such a marriage, yet that, as a matter of practical discretion, it probably would not be disregarded?——As a matter of practical discretion we do not disregard it now, because the cases are so rare in which it occurs that, generally speaking, we condone these few acts of disobedience. When the parties express their sorrow for having disobeyed the commands of the Church, we frequently require them to come before the congregation and ask pardon for the scandal they have given; then, as a matter of prudence, we marry them; but it would be quite a different case if the law made it a necessary condition for them to go before a civil registrar. In that case the disobedience should be universal if the law was to have effect, and it is in such cases that I say we would oppose it more strongly.

446. Supposing, as I think his lordship in the chair has already indicated, any one to recommend such a plan as this, that no necessity should be laid upon any parties to resort to a registrar, or to any civilian for marriage, but that the marriage might take place in your church, or in any other church, according to the forms of that church as now, but that in order to preserve a uniform compliance with the rules and law as to marriage, and at the same time to obtain proper authentication of it, the officiating clergyman should everywhere be made what I will call a local registrar, that is to say, that he shall make a record contemporaneous with the marriage, signed or not signed by the parties, as might be thought expedient, and that that record should for all civil purposes have the same effect with a marriage solemnized in any other legal mode. That would not interfere with the religious principle or the ecclesiastical law in the particular church, but it would answer every civil purpose; should you see any objection to that?——I consider on abstract principles that that is the most perfect system that could be devised, and that is the system which I apprehend was proposed by Mr. Cardwell, but the particular circumstances of our country caused us to reject it.

447. (*Mr. Justice O'Hagan.*) The Attorney General puts it that there is no theological objection?——Certainly not; on the contrary, it puts us in our proper position, giving us full power to marry or to refuse marriage, and recognizing the validity of our act.

448. (*The Attorney General.*) It would leave your position for all ecclesiastical purposes quite as favourable as it is now?——Yes, and more favourable, for it would remove legal disabilities under which we now labour.

449. (*The Solicitor General for Scotland.*) Your opinion, I understand, was favourable to it when the great body of your clergymen objected to it?——They did not object to it; but it was not accepted by the bishops for the reasons I stated before.

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450. (*The Attorney General.*) I suppose, according to the proper discipline, there should be an ecclesiastical register of all such acts now kept in every parish?——Yes; there is an ecclesiastical registry kept in every parish. It is my duty, when I make the visitation of my diocese, to see the registers and to examine, as far as I can, whether all the marriages are registered. I understand that in some places in Germany the registration books have been kept complete for 400 years back. Though in these places the religion might have been changed several times, yet the parish clergyman, be he Lutheran or Catholic, is always registrar; the registrar of marriages and the residence and church being always the same, the registration goes on and the registers are preserved.

451. (*Sir W. P. Wood.*) Have you any episcopal registration? In England there is a transcript sent?——We have not.

452. (*Mr. Justice O'Hagan.*) Practically, although that may have been the state of mind of the clergy and bishops of the time when Lord Naas's bill and Mr. Cardwell's bill were introduced; practically, in applying Mr. Monsell's act, they are actual registrars at this moment?——No.

453. But they do themselves fill up the certificates?——Yes. I know that some bishops have impressed upon the clergy the advantage that this measure is to the people. I have requested them to see that the registration is properly made, and to impress upon the people the advantage of this system of registration. I made enquiries before I came here both of several of the clergy and dispensary doctors, and they told me that they consider that all the marriages are faithfully registered. I discovered only one case of neglect where there was a dispensary doctor of intemperate habits, who for some time before his death was careless about the registry. The day I came up I received a letter from the wildest and most mountainous district of my diocese. The parish priest writes: "With regard to "the present system of registering marriages in Clan "Lawrence, I always am furnished with a few blank "certificates by Dr. Armstrong. I have first to marry "the parties and then descend from the altar and fill "the certificate for them and get the witnesses and "themselves to sign it, and afterwards I hand it to "the bridegroom with directions to send it off to the "registrar. All generally wait and go to the dispen-"sary on Wednesdays, where they deliver the filled "certificates to Dr. Armstrong. We feel it an easy "work, and there is neither complaint nor confusion "about the matter among us."

454. (*Lord Naas.*) That is not the proceeding that is laid down in the Act of Parliament. The proceeding that is described there is a purely voluntary proceeding, I apprehend, on the part of the priest?——It is a voluntary thing on the part of the priest to send the certificate himself to the registrar.

455. The obligation to register by an Act of Parliament is merely imposed on the parties being married?——Yes.

456. And there is no obligation upon the priest to register or even to sign the register?——No, there is not.

457. (*Mr. Justice O'Hagan.*) You are aware that the clergy themselves require that they should become the *custodes* of the forms and that they have the form and fill it up, that they in fact act as registrars although not compellable to do so. Is it your experience generally in Ireland that at this moment is working very well?——I can answer for my own diocese that it is. I should say that it ought to work in other places better, for I have to deal with a very poor people who have no inheritance to leave to their children, and the poor have very little interest in getting their marriages registered. The only circumstance which induced an anxiety to get their marriages

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registered is that which I mentioned a little time ago, viz., the demand for certificates in consequence of the American war.

458. (*Lord Chelmsford.*) In the *précis* with which we have been furnished as to the Irish Marriage Law, 26 & 27 Victoria, in speaking of the registration, they say, "The principle of this statute is not to commit the duty of registering these marriages to the clergymen who are authorized to solemnize them, but to compel the parties to the contract to cause it to be registered afterwards, through the intervention of the district registrars, and ultimately to secure its registration on the index of the superintendent registrar, and on the index of the Registrar General, with a view to assist in a complete registration." That is so, is it?——Yes. I should also mention that the dispensary doctor, being paid for the registration, when he finds any parties neglecting it, summons them before the magistrates at petty sessions, and when a fine is imposed, that becomes a warning to all other parties not to neglect registration. Some cases of that kind have, I believe, occurred in several dispensary districts, and as soon as a few parties are fined for neglecting it, then at once the working of the law is secured among the rest.

459. (*Mr. Monsell.*) Your lordship means the dispensary districts in your diocese, I presume?——Yes.

460. I apprehend, in other parts of Ireland, those steps have not been taken?——I know they have been taken in several dispensary districts of my diocese, and as soon as parties have been fined by the magistrates it has had the effect of causing other parties not to neglect the registration. The fine has been very generally remitted, as it was the first offence. On the whole I consider, that although the machinery of the present law is a little complex, yet I think it is working most satisfactorily and most efficiently.

461. (*Dr. Twiss.*) Do you think there would be any objection to the officiating clergyman being constituted the regular channel for transmitting these certificates?——Perhaps the clergyman would have the very same objection to undertake that as an official duty, which he has to undertake the registration as an official duty. He does not like to become the servant of the State for sixpence.

462. At present, as the law stands, the party is the person who ought to transmit it?——Yes.

463. And the registrar is not bound to insert it unless it is sent to him by the party?——I cannot undertake to say what his obligation is when he receives the certificate from a party on whom he can rely.

464. (*Mr. Justice O'Hagan.*) Do you not think that the practice they have now had so far in dealing with this matter would open the way to a negotiation, at all events about making them registrars? Do you think the same objection would apply now as applied in the case of the former bills?——I have not authority to speak for anybody else. I did not even consult with any of the bishops of Ireland before coming here.

465. (*The Solicitor General for Scotland.*) Your lordship's own opinion remains unchanged?——Yes. I thought it was a most admirable measure and most respectful to the bishops and clergy of the Catholic Church in Ireland, and so I think yet, as far as the abstract terms go; but there is that difficulty which I have mentioned, and which induced us to reject it.

466. In effect the only difference is, supposing the present experiment proceeds successfully, the Catholic clergy generally would be registering for nothing; they would have all the trouble which they have had under the former bill without the payment?——I am quite sure they are more willing to do it for nothing than to be paid.

467. (*Sir W. P. Wood.*) Would they object to be put under a small penalty and not receive anything?——I think they would prefer registering under a penalty to being paid, but I do not think they would become the obliged officials of the State in anything. I cannot say what change of circumstances might take place in after times, but in the present state of the country they would not.

468. (*The Attorney General.*) Supposing the State merely required a contemporaneous record to be made in order that the civil effects should follow from the marriages, I presume one might rely upon their disposition to do what they reasonably could to remove any risk of that record being lost?——If you would accept the registration by the priest as evidence without making him the servant of the State, without requiring him to do it under penalty, or paying him for doing it, I have no doubt that we should all be most anxious to keep the registers in the most perfect manner.

469. And if that were made necessary for the purposes of a civil act, we might rely on the clergy doing everything they could to make it as perfect as possible?——Most certainly.

470. (*Dr. Twiss.*) Are you disposed to think they would go so far as to send copies to a central registry?——I know for my own part that I should be most delighted to undertake to do it for the sake of the people, and as a service to them.

471. Assuming their books are made legal evidence they would send copies?——Yes; but I have been given to understand that no registry will be received in a court of justice as evidence unless there was an obligation under penalty on the part of the person who made it.

472. (*Mr. Justice O'Hagan.*) That certainly is not so. The penalty would not make the document evidence. The penalty is only useful to create the document?——If the registration be a voluntary act on my part altogether will my registry be received?

473. Your registry will be only evidence so far as it could be proved to be true?——I should think if by Act of Parliament the priest were constituted the registrar, not being bound under penalty to register, and not being paid for the registration, but accepting his registration as evidence, there is not a priest in Ireland who would not look upon such an enactment as being most favourable to the Catholic Church.

474. (*The Attorney General.*) And if the civil recognition of the marriage for civil purposes depended upon that being done, one might rely upon its being done as a universal rule?——I think so.

475. (*The Solicitor General for Scotland.*) Does the Church prescribe the form of registration?——Yes, there is a form prescribed in the Roman ritual.

476. And that you follow?——And that we follow. We have printed books for the purpose with the headings, the date of the marriage, the names of the parties, the names of the parents of the parties, the names of the witnesses, the circumstances as to whether there was a dispensation in banns, or any other dispensation.

477. And all material information?——Yes.

478. Does the Church make no provision whatever for preservation of the book?——We have no compulsory power in our hands. We have no power except that of conscience. All that we can say to the priest is that he must keep his books with the greatest possible care.

479. But there seems to be no provision for transmission of a registry from one person to his successor?——There is no succession either in the persons or properties of our priests. The priest is not a corporation sole as the parson is.

480. (*Mr. Justice O'Hagan.*) Does the Council of Trent make any provision for that as to any episcopal registration?——I do not recollect any law requiring a duplicate of the registry to be sent to the bishop. It is generally done in France, but I look upon it as a diocesan regulation.

481. (*The Solicitor General for Scotland.*) I presume you see no objection to the law making provision on this subject for the register being transmitted by one priest to his successor, in short, provision being made for its preservation?——It would be most desirable.

482. (*Mr. Justice O'Hagan.*) The difficulty arises always as to penalty in that case?——Yes.

483. (*Lord Chelmsford.*) Can anybody have access to that register which is kept by the priest?——Not unless by leave of the priest. It would be very inconvenient to have parties get access to the register, especially to the register of births.

484. (*Dr. Twiss.*) The priest is the *custos* of it?——Yes.

485. (*Lord Naas.*) Are all marriages solemnized by the priest under all circumstances registered in the register?——All I can say is, that the priest is most strictly bound to do it. There may be accidental omissions arising from delay, or from a memorandum being lost.

486. Do you think the priest would be justified in wilfully omitting the registration of a marriage from one of those registers?——He is bound to register every marriage that he celebrates.

487. (*Mr. Monsell.*) Take, for instance, the case of a death-bed marriage, would that be registered?——We are advised to keep a private and separate registry for that purpose. If parties are living together, and supposed by all in the neighbourhood to be married, and it is revealed on the death-bed that they are not, in order to legitimate the offspring the priest marries them. He should make a private registry of such a marriage in order that it might serve as a proof in case the legitimacy of the children is subsequently disputed. I suppose that it is for the purpose of making the offspring legitimate that the marriage takes place.

488. (*The Attorney General.*) It would not have that effect by the law of Ireland, would it; I mean for civil purposes?——Yes, you accept such a marriage in Ireland.

489. But would it make children born before the date of the marriage legitimate?——It would.

490. (*Lord Chelmsford.*) You are contemplating the case of a party being in the familyway, and then a death-bed marriage?——I perceive that I am speaking from the canon law, not from the civil law. Our subsequent marriage legitimates all offspring, unless there was a diriment impediment between the parties at the time of conception.

491. (*The Attorney General.*) That is the canon law?——Yes.

492. (*Lord Naas.*) In that particular case, would it be objected that the registry of such a marriage as that should be sent to the civil officer?——These are what are called marriages of conscience, and I should say that, unless a necessity arose for producing the registry, that we would have an objection to send it, provided the parties wished to be privately married.

493. Then there would be an objection on the part of the priests to send a registration of every marriage?——Such cases might arise. The parties would forfeit in their own interest the benefits of registration and of the evidence it affords.

494. (*Mr. Justice O'Hagan.*) I take it that cases of that sort will be very few?——Very few.

495. (*The Attorney General.*) In the case of what you describe as a mere marriage of conscience it would not be wanted for any civil purposes?——No. It would be hard to bind ourselves to return every marriage, but I think the cases would be very rare indeed in which it may not be done.

496. Probably, if the system were once established and put in work it would have a tendency to become the received rule, and to be acted upon everywhere?——I think so.

497. (*Lord Naas.*) Do you think there would be a great objection in Ireland to any regulation or law that would have the effect of making registration, no matter how conducted, interfere in any way with the validity of the marriage; for instance, that it should be attached in any way as a condition of registration that the marriage should not be valid without it?——Of course you speak of validity for civil effects; but it is much better that the law should remain as it is in that respect, namely, that the marriage, however proved, is admitted for civil purposes. I should like to enforce registration as much as possible, so that there might be a greater evidence of marriage; but I never would like to have registration go beyond evidence, or have it anything more than evidence of marriage.

498. You think there would be a great objection to making the non-compliance with registration in any way affect the validity of the marriage?——Certainly.

499. And that there would be a great objection on the part of the Roman Catholic clergy to anything of the kind?——It is a contract that must always be favourably dealt with.

500. (*The Attorney General.*) Supposing we substitute for the word "registration," which Lord Naas has used, a written record, made at the time and attested by the priest solemnizing the marriage, if the State required that to authenticate the marriage, would you think the objection equally applied to that, I mean, without making the subsequent transmission of that record to a general register essential?——I think we should very much object to it. When once marriage is contracted *per verba de præsenti* before the parish priest and two witnesses, that is a marriage *in foro conscientiæ et ecclesiæ*. Now it would be very inconvenient if any marriage that is admitted *in foro conscientiæ et ecclesiæ* would be held null and void *in foro civili*.

501. Does not that difficulty unavoidably arise in the actual state of the law in this and other countries in some cases? For example, take the case of an impediment not recognized by the civil law?——There are marriages which are valid in the eyes of the Church, and which are held to be invalid by the civil law, and *vice versâ;* but we should not like to multiply such cases. I think the question occurred here on the enquiry as to marriage with a deceased wife's sister. I remember Cardinal Wiseman's evidence on the occasion was in favour of recognizing such a marriage, because it is sometimes allowed by papal dispensation. The case is very rare in Ireland, and so rare that the opinions of some Irish bishops were the very reverse; they did not wish a legal recognition of such marriages.

502. You said that you would not think it desirable to multiply difficulties in conflicts of that sort, but do you think, practically, that if it depended on what is to be done by the solemnizing priest at the time of the marriage, that would have any tendency in an appreciable degree to multiply such difficulties; I mean if nothing more were required by the State than that the record should be made in the presence of the priest?——I must admit that it is a law so easy to comply with, that the grievance would not be very great; but yet marriage being once contracted validly, it is most important that its validity should be recognized, and that as little difficulty as possible should be opposed to its recognition. I think it would be quite enough that the law of registration should be simply preceptive, for the purpose of securing evidence of the contract, but that the contract should not be civilly invalidated by its omission.

503. It is conceivable of course that that might, if adopted, be part of a plan which would contain what I would describe as equivalents operating the other way; for example, which would make a mixed marriage authorized by your Church between a Roman Catholic and a Protestant, though solemnized in a Roman Catholic church, legal, which is not the law now. That would be removing conflict as far as it went, would it not?——Yes.

504. Of course the object would be to obtain as much uniformity as was consistent with the rights of conscience. Do you think there would be any very serious practical objection to a condition which depended entirely upon the clergy themselves?——I have said before that I think we should always acknowledge that the law commanding registration is a very just and proper one, but a law not acknowledging the validity of the marriage unless registered would, I think, be unfavourably received, simply inasmuch as

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it would be an additional restriction. It would be establishing a civil diriment impediment which does not already exist.

505. (*Mr. Justice O'Hagan.*) You desire that registration should be evidence, but not the only evidence?——Yes.

506. (*The Attorney General.*) If you accepted it, it would be rather under protest than otherwise?—— The State might make such a law, but we should still hold the marriage to be valid, whether registered or not, and then there would be a conflict between us.

507. (*Lord Chelmsford.*) Have you any observations to make with regard to the working of the present system of marriage?——No; except what I have already stated. I have made enquiries specially for the purposes of this examination from several of the parish clergy and the dispensary doctors in my diocese, and they tell me that it is working satisfactorily, that all the marriages are faithfully registered, and I believe that such is the case. I think it is a most satisfactory arrangement, and for the present I should not wish to see any change. I should like to see this system get a fair trial. Perhaps circumstances may change, so that hereafter we might be able to have such an enactment as was proposed before by Lord Naas.

508. I did not mean to confine my question to registration, but whether upon any other ground there is anything in the working of the system itself which you think ought to be observed upon?——There is an observation which I made to-day to Justice O'Hagan, which I suppose does not concern the Commission here. I am reminded of it by the question asked about the pre-contract. I think it would be a most desirable thing in the country if it were possible to bring actions for breach of promise of marriage before quarter sessions or petty sessions. The poor are debarred from their remedy in that case. The only remedy is our authority, and we cannot compel the performance of such a contract; we can only urge it. I have known cases of very great hardship, where poor young women have been promised marriage, and the parties have broken with them; and I cannot send them to the Court of Queen's Bench.

509. (*Mr. Justice O'Hagan.*) With reference to what Lord Chelmsford stated as to the general working of the system, the Roman Catholic marriages are on a different footing from Protestant marriages in Ireland?——Yes.

510. A good deal has been said about clandestinity and irregularity in that way. Perhaps you will be kind enough to convey your views on the operation of the system to the Commissioners?——With regard to clandestinity, the law of Trent provides for that by rendering null and void any marriage that is not performed before the parish priest, or another priest delegated by him, or by the ordinary, and at least two witnesses. Formerly, in Ireland marriages were generally celebrated in the houses of the parties. They certainly were not clandestine, because there was a very large party assembled on the occasion, an exceedingly numerous attendance of the friends and relatives of the bride and bridegroom; but the celebration might be at a late hour, and on the whole the system was not one that we could approve of. In the Synod of Thurles, in the year 1850, it was enacted that all marriages should be thenceforth celebrated in the church. As far as my diocese is concerned that law is strictly observed. I do not even allow my vicars to give a dispensation in it. I reserve the power of dispensing to myself, and the dispensations I have given have been very few. Sometimes, when a marriage was celebrated in Lent or Advent, I have directed the marriage to be celebrated in the sacristy, but always before a competent number of witnesses. Those cases have been very few. Some other cases occurred where an elderly woman was to be married, and did not like to appear before the people, or where she had no male relative to accompany her to church. I recollect some three or four dispensations which I have on grounds of that kind, always providing, however, that there should be the proper witnesses, and knowing fully the circumstances of the case, and that there was no fraud intended. I direct not only that the marriage shall be celebrated in the church, but that they shall all be celebrated before 2 o'clock; and I urge, as much as possible, an earlier celebration, because I wish, as the Church wishes and directs, that the marriage ceremony should be accompanied by the celebration of mass, and that should be before 12 o'clock. In some of the very large country parishes I find a little difficulty in enforcing the regulation strictly. People have to come sometimes three, four, and five miles, and consequently may come an hour late. I have in my own parish refused marriage, even on Shrove Tuesday, the last day of the open time to parties coming after 2 o'clock, but sometimes the priest may yield a little to the necessity of the case, or the exigencies of his parishioners. They tell me, that by degrees the people will be brought into the habit of coming early. But the general rule with us, I may say the universal rule, is that all marriages are celebrated in the church, and celebrated, as much as possible, before 2 o'clock.

511. (*Lord Naas.*) Will no priest in your diocese celebrate a marriage at a private house without a special permission from you?——None dare do it.

512. (*Mr. Justice O'Hagan.*) Since the Synod of Thurles, is that generally the case in Ireland?——I assume that it is. It is the law of the Church of Ireland now, and very strictly enjoined by the holy see. I have no reason to suppose that there is any diocese in Ireland where it is neglected. I think there is the very same publicity given to marriage with us as in the Protestant Church, with the exception of the publication of the banns, which is omitted in certain districts.

513. That equally applies in the Protestant Church? ——In the Protestant Church they are also married by licence.

514. (*Dr. Twiss.*) It would seem that the parish priest acts as a kind of surrogate to the vicar?—— I do not precisely understand.

515. The vicar, I think, grants the licence on the certificate of the parish priest?——Yes, the parish priest gives a certificate stating that the parties are free from any impediment, and upon that certificate by the parish priest the vicar grants the dispensation in banns.

516. In England the practice is for the vicar or the chancellor to grant the licence on the surrogate's certificate, which is obtained on the affidavit made before him?——Then the parish priest acts the surrogate's part with us.

517. (*Lord Naas.*) Suppose a priest celebrated a marriage, not being a parish priest, between two persons with whom he was unacquainted, the priest being a priest regularly constituted as such, what would be the effect of that marriage?——None at all.

518. It would be absolutely invalid?——Absolutely null; the only effect would be that he and the parties and all the witnesses, and all *prebentes favorem* would be liable to ecclesiastical censures.

519. Even though he might be legally constituted parish priest of another parish?——Yes.

520. (*Lord Chelmsford.*) That would be in obedience to the law of the Council of Trent?——Yes; the case sometimes occurs without fault of the priest, by parties going to the large cities and representing themselves as inhabitants of the city. They bring with them witnesses, who declare that they know them, and that they have been resident there for a certain length of time.

521. Is any number of days requisite for residence before they can obtain a certificate?——Yes, when they do not possess a domicile.

522. What length of residence?——When it is certain that the parties have a regular domicile, no length of residence is required. The right resulting from domicile is acquired at once by the intention of fixed and permanent habitation sufficiently evidenced. *Quasi* domicile or residence during the greater part of a

year dates from the day that it has been commenced with the intention of such prolonged residence, but a month's dwelling in the place is required before parties can be married.

523. (*The Attorney General.*) Is that rule as to length of residence required by the Council of Trent? ——No; it has been established by decrees of the Roman congregations.

524. Are you able to tell us exactly when it was that these decrees of the Council of Trent were published in Ireland?——I cannot tell when they were published throughout the greater part of Ireland. We considered them as published from time immemorial in our dioceses, except Dublin, Kildare, Ferns, Ossory, Meath, and Galway, where they were published on the 2nd of December 1827, and had force of law on the 1st January 1828.

525. (*Lord Chelmsford.*) Is not there any case of residence distinct from domicile, or, as we improperly call it, *quasi* domicile—mere residence. As I understand, what we call *quasi* domicile is a month's residence with the intention of continuing that residence?——*Per majorem anni partem*, residence during the greater part of the year is supposed to constitute the *quasi* domicile, but then we require the month's residence as a proof of that intention. A further question occurs as to whether the month's residence alone will constitute the *quasi* domicile, and I must say that I do not consider that question sufficiently decided. Some time since a circular letter was sent from the Propaganda, asking our opinions whether or not the month's residence ought to be considered sufficient for the purposes of the Council of Trent. I cannot tell what answers were given. My answer was, that considering the circumstances of our times, it would be more advisable to hold it sufficient for the purposes of the law, but the Propaganda has recently declared that it is not expedient (*haud expedire*) to celebrate marriage after only a month's residence unless there is the *animus manendi*.

526. (*Sir W. P. Wood.*) With anything less than a month is the marriage absolutely void by the Council of Trent?——If the person transfers his *lares et penates* to any place he becomes domiciled there the very day, and he can marry at once.

527. (*The Attorney General.*) But if he is transitory nothing less than a month will do?——Nothing less than a month, and it is even said by canonists that a month's residence will not suffice if it be only *recreationis gratia vel ex alia brevi causa.*

528. That point, I understood you to say, is not absolutely settled?——There are decisions in favour of marriages contracted after only one month of residence. I remember one of the year 1843, of the sacred congregation of the Inquisition, by which the marriage of parties who came from Malines to this city of London, and who married after only one month's residence, was held to be valid; but the exceptions of canonists, to which I referred, the doubtful expressions of Benedict XIV., the consultation by the Propaganda which I mentioned, and the recent instruction to which I referred, make me doubtful as to whether the month's residence is *per se* sufficient, or merely sufficient as evidence of *quasi* domicile. I am more inclined to think that the *animus manendi* is necessary.

529. (*Mr. Justice O'Hagan.*) Do you conceive, having regard to these rules of the Council of Trent and the Synod of Thurles, that marriages are celebrated among Catholics in Ireland without irregularities on public mischief or social scandal?——I do, indeed. I am quite satisfied that marriages of minors are not celebrated without the leave of the parents, unless when justifying causes exist, that marriages are not celebrated privately, in fact that there are no marriages celebrated clandestinely in the sense in which you understand clandestinity. I remember seeing some few cases which came before your courts of justice and which caused unpleasant comments. I cannot account for them, they did not come within my jurisdiction.

530. What would you say as to the interference of the law in any specific way with the action of the Roman church in Ireland as to marriage?——We certainly should resist any law that would restrict our present liberty in the matter. When we find ourselves enjoying a certain amount of freedom, and that we derive no advantage from the State in the discharge of our duties as clergymen, I think that unless the law was exceedingly favourable to us we should resist any interference. We may take the converse of an old maxim and say, "*qui sentit incommodum sentire debet et commodum.*" Now the *commodum* with us is the freedom and independence of our Church.

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531. (*The Solicitor General for Scotland.*) Your lordship might be of opinion that on the whole it was beneficial to the people to fix this particular mode of evidencing marriage?——Yes, provided registration is not made the sole evidence.

532. (*Mr. Justice O'Hagan.*) I am not now on the application to the Roman Catholic church in Ireland of the law which applies to the Presbyterian mainly, and in fact applies to all Protestants, Episcopalians, and Presbyterians both?——For instance, you might require by law that we should publish banns, you might require that we should celebrate marriage between the hours of 8 and 2 o'clock in the day; all these things we should wish to do ourselves; but we certainly should not wish to be commanded by you to do them.

533. (*The Attorney General.*) That would be a direct interference with your mode of solemnizing marriage?——Yes.

534. You would object to anything of that sort?——Yes.

535. (*Mr. Justice O'Hagan.*) You think, in saying so, you speak the general sentiment of the clergy?——I am quite certain as long as matters are as they are now we wish to keep up a complete independence of the State, and therefore in those things in which we act at present with a certain amount of liberty we wish to preserve the right and power of doing so still.

536. (*Dr. Twiss.*) Do you conceive that there would be any objection to the State legislating in this manner, wherever a marriage shall be celebrated within certain hours, under certain circumstances, and so on, that it shall be held to be a good marriage, or wherever a marriage so celebrated is registered in such a way and the certificate transmitted, that certificate shall be good evidence?——A law so worded requires no action from us; but it imposes certain restrictions on the people, inasmuch as you would not accept evidence of their marriage other than what you prescribe yourself. We should disapprove of such a law as refusing civil validity to marriages really valid.

537. (*The Attorney General.*) You would have your own judgment on the policy of such a law, but it would not infringe an ecclesiastical principle, if your Ecclesiastical Acts were not interfered with?——The right principle is that every marriage held good in *foro ecclesiæ* should be held good in *foro civili*, and every marriage held to be invalid in *foro ecclesiæ* should be held invalid in *foro civili*. I have some notion that this was the old common law of England.

538. (*Mr. Justice O'Hagan.*) You do not think that any interference by law at present with the celebration of marriage in the way indicated would be favourably received in Ireland?——Certainly not. It must be observed, too, that our people do not like formalities; they do not like to have their contracts depend solely on written forms. The habits of our people are very different in this respect from those of other nations.

539. (*Lord Chelmsford.*) Has your lordship any observation to make on the subject of mixed marriages?——If I were merely to consult my own feelings upon that subject I should not desire any considerable change in the law. We ought to distinguish two different cases; first, a marriage between a Catholic and Protestant celebrated by a Catholic priest is in-

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valid by your law, and the priest subjected to penalty; secondly, the marriage of Catholics, of whom one has been a Protestant within 12 months of the celebration of the marriage, is also invalid and penal for the priest. As to the first case I say that if I were to consult my own feelings and convenience I should not wish for any change in the law, because it is very convenient for me, wishing as I do to prevent such marriages, to be able to say to parties seeking our ministration, "No, the marriage will not be valid " in law, and I shall be subjected to a severe penalty; " and, again, it is prohibited by the Church, and none " but the Pope can dispense you." The Commission should know that mixed marriages are so strictly prohibited in our Church that the bishops have not the power of permitting them. The dispensation is reserved to the Pope. But, taking a wider view of the question, and looking to the convenience of others as well as my own, I say that it is better we should have the power to assist legally and validly at a mixed marriage. First, because such marriages are more frequent in parts of the country where the population is more mixed. Secondly, because such marriages are valid in *foro ecclesiæ*, even when clandestine, as Protestants are expressly exempted from the law of Trent, and it is better that what is valid *coram Deo* should be also valid *coram lege*. Thirdly, because the Protestant clergyman has power to celebrate such marriages, and on the general principle of religious equality I should be able to do the same; there is no reason why he should have a power that I have not. Fourthly, the Catholic party has a grave objection to contract before a Protestant clergyman on account of the religious rite which accompanies the celebration, and the Protestant has not always the same objection to our ministration. It is true that there is no necessity of contracting before the Protestant clergyman now, as the contract before the registrar will suffice for the law. In case of our being authorized by law to celebrate mixed marriages I think it would be only fair, that as far as such marriages are concerned, we should submit to the formalities which the law requires from the Protestant clergyman.

540. (*Mr. Justice O'Hagan.*) You would not require the same freedom which you assert? You would be willing to subject yourself to the same restrictions?——Yes; the only difficulty which occurs is that when we celebrate a mixed marriage, we are not allowed to celebrate it within the church. It is a very old regulation. When Charles the First was married to Henrietta Maria of France, there was a platform erected in front of Notre Dame, and it was there that the marriage was celebrated by the procurator or ambassador of King Charles. However, I know that this difficulty can be got over, and that here in England the Pope has sometimes allowed the celebration of mixed marriages, with publication of banns in the church. With regard to the second case, where the parties have professed themselves Catholics, I think decidedly we ought to have the power of marrying such parties when we are satisfied that they are *bonâ fide* members of our Church. I know that cases of very serious grievance have occurred from marriages being celebrated, I would say, imprudently by priests within 12 months after the conversion of the party. I have one case before my mind, where a Protestant farmer came to me to get leave to marry a Catholic young woman of the neighbourhood. I told him I could not do it, I had no power to marry him. He then went and made an abjuration, and was received into the Catholic Church, and a very short time afterwards he was married. I suppose I was a consenting party, but it was a very imprudent thing to do. He spent the poor girl's fortune, which was some 300*l.*, turned her out of doors, and the next place I met her was at the door of an attorney, whom she was going to employ to take proceedings against him. I told the poor young woman it was utterly useless, that she was not married in law, and she is now living with her father, after having her fortune spent, and after having been maltreated by this fellow, who professed himself a Catholic, and in a very short time afterwards went back again to the Protestant Church. I would, then, on the whole wish that the Catholic clergy were placed on the same footing as the Protestant clergy with regard to mixed marriages. I think it would be the wiser course. I should add, that as we are strictly forbidden, not only by the law of the land, but also by the law of the Church, to celebrate the marriage of two Protestants, the Protestant clergyman should not have the power by law of marrying two Catholics.

541. (*Mr. Justice O'Hagan.*) That would be in fact adopting the principle of Lord Campbell's bill, which was precisely to that effect?——I am not acquainted with the terms of Lord Campbell's bill.

542. (*Sir W. P. Wood.*) If that first step were taken, the hardship you have spoken of would not arise, because then it might apply to the case of the temporary conversion as well, that it should be dealt with as a mixed marriage?——Just so.

543. There is some advantage in preventing merely temporary conversions for such purposes as this man had in view?——Yes.

544. (*The Attorney General.*) What I understand is, that on general principles you think, as far as the State is concerned, it should deal with Roman Catholics as it does with all others?——Just so; if in Ireland a privilege were granted to any religious body, it should be to the religion of the vast majority of the people, but we ask none. Then it must be observed that our Church law protects the marriages of Catholics from the danger of clandestinity more than the law of the State does; for a priest has no more power than a layman to marry with us unless he is a parish priest, or delegated by the parish priest or the ordinary. We now universally hold that the priest is not the minister of the sacrament of marriage; the *partes contrahentes* are the ministers of the sacrament, inasmuch as the contract itself is the sacrament. The presence of the priest is only required by the Church in order to witness the marriage in the first place, and then to give to the marriage the sanction of religion by the nuptial benediction.

545. (*Sir W. P. Wood.*) His presence would be enough even if any other priest officiated?——Yes.

546. (*Lord Naas.*) The parish priest is bound to satisfy himself that the two parties are members of the Church before he marries them?——Yes, and not only of the Church, but of his own parish.

547. That is indispensable?——Yes; but it is enough for the validity of the marriage that one of them should be his own parishioner.

548. Suppose he solemnizes a marriage in which neither of them are?——Then he has no power whatever; the marriage is null and void.

549. (*The Attorney General.*) The involuntary presence of the parish priest would be enough, would it not?——If he was *premonitus;* if he was brought there to be a witness his involuntary presence would be sufficient. The mere presence of the priest would not be sufficient, unless his attention is so directed to the act that he may be a competent witness of it.

550. (*Mr. Justice O'Hagan.*) That law does not apply at all to mixed marriages?——Not in these countries.

551. The presence of a priest is not necessary for mixed marriages?——Benedict the Fourteenth, in the first instance, exempted the mixed marriages of Holland and Belgium from the action of the law of Trent, and Pius the Sixth exempted the mixed marriages of Ireland from the action of the same law.

552. So they rest on the old common law?——Yes, it is even questionable whether the law of Trent affects mixed marriages in countries which have got no special dispensation, and where Protestants formed a distinct religious community prior to the publication of the law. The case occurred when the brother of Napoleon the First married in Baltimore; the emperor wished the marriage to be declared null and void on the ground of clandestinity. Pius the Seventh

nswered, that even if the Council of Trent had been ablished in Baltimore, yet it could not be supposed have been published in the Protestant parish, and erefore that the Protestant party was not bound it.

553. (*The Attorney General.*) On the same principle of course your Church would recognize as validly married all Protestants who were married according to the law to which they were subject at the time?——We of course acknowledge the validity of all Protestant marriages in these countries, but the question is disputed with regard to those countries where the Protestants do not form a distinct community. Thus there have been disputes on the question in Italy.

554. (*Lord Chelmsford.*) I think there was evidence given by Cardinal Wiseman on the question of the marriage of the Duke of Sussex?——Was not the Duke of Sussex married by a Catholic priest?

555. (*The Attorney General.*) No; by a Protestant clergyman, I think.

556. (*Lord Chelmsford.*) I believe Cardinal Wiseman in that case gave evidence that it was a valid marriage?——I know it is considered doubtful in those cases in which Protestants do not form a distinct community; and I remember hearing Cardinal Wiseman speak on that subject long after he gave that evidence. He had reason to change his opinion.

557. (*The Attorney General.*) I presume that if anywhere that difficulty would exist at Rome?—— The difficulty must exist in those countries where there is no regular Protestant community, and where, consequently, the law contemplates none but Catholics. The parish priest is the only recognized civil officer for the purpose of marriage, as the parson was in England until the Act of 1837-38, which was introduced, if I mistake not, by the late Sir Robert Peel. In the Austrian dominions of Italy the State required Protestants to contract before the parish priest where they had not a clergyman of their own Church.

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558. Was that the civil law of the empire?——I think so.

559. (*Mr. Justice O'Hagan.*) Was that under the concordat?——I do not know how the matter stands now, but I think that was the case in several Catholic countries.

560. (*Dr. Twiss.*) I think Cardinal Wiseman held the marriage good on the ground *ex necessitate* that there was no other way in which the parties could be married according to the law of the country. They could not be married by a Roman Catholic priest. I think he put it on that ground?——There are many who hold that the marriage of Protestants, even in Catholic countries, is valid, notwithstanding the law of Trent; on this ground, that the law of Trent was enacted subsequent to the separation of the Protestant Church, and therefore it could not be supposed that it was the wish of the Church to bind by her laws persons who had separated from her communion previous to their enactment. That is a principle very generally held by theologians. On the same ground, if a new sect now left the Catholic Church they would continue bound by the law of Trent.

Adjourned.

Wednesday, 18th April 1866.

PRESENT :

The Right Hon. The Lord Chelmsford.	Vice Chancellor Sir William Page Wood.
The Right Hon. The Lord Lyveden.	Sir Hugh M. Cairns, Q.C., M.P.
The Right Hon. William Monsell, M.P.	Travers Twiss, Esq., Q.C., D.C.L.

LORD CHELMSFORD in the Chair.

The Right Hon. Sir Joseph Napier examined.

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561. (*Lord Chelmsford.*) The Commissioners are very happy to have the advantage of your experience on this most important subject, and they would wish to have the benefit of any observations which have occurred to you with regard to the system generally of the marriage law in Ireland?——Our code is mainly to be found in the 7 & 8 Vict. c. 81, the 26 Vict. c. 27, and the 26 & 27 Vict. c. 90. The first provides for marriages in the Established Church and for Presbyterian marriages. It has also provisions for marriages amongst the various Nonconformist bodies; for marriages of Jews and Quakers, and for marriages before the registrar in his office. The law of the Established Church is interfered with very slightly. There is a notice required in order to get a surrogate's licence, and the certificate of the district registrar of notice having been given to him under the Statute is made equivalent to a due publication of banns. The presbyteries of the Presbyterian Church appoint their own officers to grant licences and certify their places of worship; this is subject to the approval of the Lord Lieutenant. I may observe that the Presbyterian Church in Ireland has a recognized status, and receives what is called the regium donum as a public provision of the State. With the celebration of their marriages the registrar does not interfere. Provision is made for the marriages of Jews and Quakers, for the marriages of the various Nonconformists in duly registered buildings, and for marriages in the registrar's office. In these latter cases the intervention of the registrar is more or less required. He is the party to grant licences, and the notice of the intended marriage must be given to him. The Act excludes from its operation all Roman Catholic marriages which may be lawfully celebrated, that is to say, all that the Roman Catholic clergy are not prohibited from celebrating. This has left the law as to what are called mixed marriages by Roman Catholic priests as it stood before. Next we have the arrangement for registration of marriages. The registrar general has a central office and he furnishes marriage register books and forms for certified copies to the district registrars, to the officiating clergy of the Established Church, to the Presbyterian ministers, and to officers specially appointed by the Quakers and the Jews. In the case of the Established Church and the Presbyterian Church the celebrant of each marriage is required to make an entry of it immediately after celebration, and the like is to be done by the officers of the Jews and Quakers as to their marriages, and a certified copy of all of these entries of marriages is required to be periodically delivered to the district registrar. He is required to register the marriages of Nonconformists celebrated in their registered buildings in his presence, and marriages concluded in his office; and certified copies of the several registers of marriages are to be sent to the registrar general. A penalty not exceeding 50*l.* is imposed upon every person who shall without reasonable cause omit to register any marriage solemnized by him, or which he ought to register. In this way there is substantially provision made for the registration of all, except Roman Catholic marriages. The second Act (26 Vict. c. 27), known as Sir Edward Grogan's Act, was mainly intended to make more satisfactory provision for the Nonconformist bodies, such as the Wesleyan Methodists, Baptists, and others. Under the first Act the presence of the registrar at all their marriages was essential, and he was their registering officer. This has been changed. The form of notice to the regis-

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trar was altered, and the mode of its publication. A declaration is required to be made and subscribed in the presence of the registrar, to the effect that there is no lawful impediment to the marriage. The officiating minister of each registered building is furnished with marriage register books in duplicate, and he is required immediately after the solemnization of any marriage by him to enter the requisite particulars in both books, and the entry is to be signed by him, by the parties married, and two witnesses. The presence of the registrar at the marriage is not required. The minister is liable to a penalty of 40*l.* if he does not register the marriage. In April, July, October, and January, he is to send to the district registrar a copy certified by him, in a set form, of all entries in the duplicate books in the quarter last past, or he is to certify that none has been made if the case so be. One copy of the register book when filled shall be delivered to the registrar of marriages for the district, the other shall be kept with the other registers of his place of worship. Lastly, we have the third Act, (26 & 27 Vict. c. 90), for the registration of Roman Catholic marriages. It provides that the parties to the marriage shall, before solemnization, procure from the district registrar a certificate in an appointed form given in the schedule, and produce it to the clergyman celebrating the marriage, and this shall be signed by the parties, by two witnesses at least, and by the clergyman; and then it is enacted that the parties contracting the marriage shall, within three days, deliver or send the certificate by post to the registrar for the district, and a penalty of not less than 10*l.* is imposed on the husband in case of omission so to register the certificate. Now, you observe that the provision to which I have last referred, is totally different from the plan under the previous Acts, where you have the Church minister, the Presbyterian minister, and the officiating ministers of the Nonconformist denominations bound to make a register of the marriages which they respectively celebrate. Under the second Act, one of the duplicate books when filled up is sent to the district registrar, to whom a certified return is also made every quarter of a year of the marriages celebrated since the last return; if any of these ministers neglect that duty, he is liable to a penalty; but here is the husband who is to send the certificate of his marriage, and the priest who celebrates is neither bound to make a registry, nor to send a return of any kind. I think the Roman Catholic clergyman should be required to register the marriage which he certifies, and sign duplicate books of registry as others do. The Roman Catholic registration is evidently very defective, for I find that there were 18,000 Roman Catholic marriages registered in 1864, and 21,000 in 1865, and Mr. Justice O'Hagan, in an address before the Statistical Society in Dublin, says, that he considers there are probably about 45,000 marriages in Ireland annually. If so, about one-half of the Roman Catholic marriages have been registered.

562. You see the difficulty with regard to the registration of Roman Catholic marriages is this, that the Roman Catholics object very strongly to any control of the state in any way over the celebration of marriage, and they therefore object to be themselves compelled to make out a certificate, and under a penalty, to transmit that certificate to the registrar; that is the difficulty?——I do not see that there is any interference with conscience in requiring them to make and keep a register. It is another matter to make the marriage void for non-compliance with any condition imposed. This is merely that they shall help to secure a proper record of the marriage. I cannot for the life of me see where the objection is to that.

563. Then there is another difficulty which they have suggested, and which perhaps you have turned your attention to, as to the effect of the certificate, whether the certificate is to be the only evidence of the marriage, or whether it is to be merely evidence, and if it is wanting, whether it may be supplied in some other way?——If they made a registry of this kind according to the direction of the Act, it would be the proper evidence of the marriage; at present their certificates are not properly admissible as evidence, they are but private documents.

564. The question goes rather deeper than that; supposing, if this duty were imposed upon them, they should omit to perform their duty, whether the marriage would be invalid; whether it ought to be considered invalid, if that certificate has not been given?——That would equally apply to the marriages of the Established Church; of Presbyterian and other denominations. It is quite competent for the State to say by what mode a marriage shall be proved in a court of justice. The State might say, we shall require the certificate of registry as the proper proof; but I think it would be quite another thing to say that the marriage should be regarded as absolutely void in the absence of the certificate.

565. (*Sir H. Cairns.*) It has been the tendency, has it not, of all the legislation both in this country and in Ireland not to make the validity of a marriage depend upon the observance of formalities imposed by the State, however desirable it might be to have those formalities observed?——I think so; and there must now be a wilful violation by both parties of the conditions prescribed, in order to avoid a marriage. I confess I have a strong inclination against the State attempting to nullify marriages in themselves as absolutely void. It is another thing for the State to require certain conditions to be observed for the public good, and to punish the parties who infringe those conditions, or deny privileges which are conceded to those who conform to the conditions.

566. In the case of the certificate, any legislation that would avoid the marriage would be punishing the parties to the marriage for the fault of the celebrant?——So it might. But after all, we must remember that the provisions in the second Act seem to be very well guarded; for it requires the entry to be signed immediately after the celebration of the marriage, and both the parties and the clergyman sign it. That is different from requiring a certificate to be sent within three days to the district registrar. A man in humble life might never think of sending it.

567. (*Lord Chelmsford.*) He might not; many would, but many would not?——Many would not. I believe, by the decree of the Council of Trent, the Roman Catholic clergy are bound to keep a register of the marriages.

568. We are informed, that under the law of Trent it is necessary that there should be a certificate of the marriage preserved; but that, we understand, is preserved merely by the priest?——It is no use for civil purposes.

569. And there is no duplicate of that certificate sent to the bishop, or kept by the bishop, and the consequence is that it constantly happens, where there has been a change in the ministry, that these certificates have been lost and cannot be found. In fact, there has been rather a loose and irregular way of keeping these certificates; the priest having no fixed residence?——All that would be avoided by duplicate books of registry.

570. (*Sir H. Cairns.*) Then, I suppose, that certificate is kept only as between himself and his ecclesiastical superiors, and not for any State purpose?——I suppose so. It is not *per se* admissible in evidence. I had occasion to consider that in the case of Malone *v.* O'Connor, in Ireland, and I held that the certificate was not *per se* admissible. It was admitted in that case not as a certificate, but as part of a declaration of marriage.

571. (*Lord Chelmsford.*) It is entirely between himself and the bishop; the bishop requiring him to keep this register?——I think, if they would consent upon the celebration of each marriage to sign the duplicate books, one of them when filled up to be left with the registrar of the district, and the other to be kept by the priest himself, and then a certified copy of the entry in the register should be the proper *primâ facie* evidence of marriage, it would be a great

onvenience. There you would have the signature of ie parties and of the clergyman and two witnesses, so s to exclude any doubtful transaction. I can quite nderstand objections to making the validity of mar- iage depend upon the performance of certain collateral onditions. I myself am somewhat averse to nullify arriages on account of the non-performance of such onditions; but, on the other hand, I think it perfectly llowable for the State to direct those things to be one; things which it considers important for the eneral good, that is, for the purposes of publicity, nd preventing sudden and improvident marriages.

572. (*Mr. Monsell.*) Under my Act the registrar ssues the certificates?——He is bound to help the arties in filling them up. I believe that is all. He ets no fee for it.

573. Then the husband, in the case of a marriage, s bound within a certain number of days to transmit hat certificate to the registrar, signed regularly by he officiating minister, and if he does not do so he is ubject to a penalty?——Yes.

574. Suppose that penalty really to be enforced; ppose the registrar, the police magistrates, and the ivil authorities to co-operate together, would it not e almost infallibly certain under my Act that every ngle marriage would be registered?——I declare I o not know that. It would seem to me to be the more irect and proper course to have the entry made in a ook and duly signed by the officiating clergyman, ho seems to me to be the proper person to record he marriage which he has celebrated.

575. I am not discussing that at all now, I am erely asking you whether you do not consider the xisting law, if properly carried out, would secure the nd we all have in view, namely, the registry of arriage?——There is no doubt that it might, if the arties would in all cases send the certificates to the egistrar.

[576. (*Mr. Monsell.*) I have been supplied with an ccount of the marriages registered in every diocese in reland, and in some dioceses where it is properly arried out, as far as one can judge by that calcu- ation of which you have been speaking, every arriage has probably been registered; but in other ioceses you will find that the Act is hardly in peration at all. I think it will be very well worth ur consideration as to whether we should not inquire s to why that is. The real fact of the matter is, I hink, that the civil authorities have taken no steps t all to put the Act in operation by means of sum- moning parties who have not complied with its provisions, and I think that in every district where ou really had the civil authorities taking the thing p warmly you would find the marriages would be egistered.]

577. (*Sir H. Cairns.*) I should like to ask you whether you think that a penalty of 5*l.* has a very errific effect on the mind of a poor labouring man who is going to be married? Do you think the penalty which exists, if he does not send in a certifi- ate, operates at all when he perfectly well knows hat it cannot be enforced?——It is almost nugatory. Besides, they do not like to part with the document igned by the priest. I understood Lord Chelmsford o suggest that the Commissioners wished to make ut some kind of uniform system of registration.

578. (*Lord Chelmsford.*) Quite so?——It appears ow that not one-half of the Roman Catholic mar- iages are registered; I can quite understand why hat is so. Among the humbler classes many would ever think of sending the certificate.

579. Do you see any objection at all to making the officiating minister in the ceremony of marriage, in every denomination, a sort of local registrar for the purpose of registering the marriages?——I cannot see the least objection; and that is what is done, in effect, under the two first Acts. The best provision is that for the making and signing the entry in the dupli- cate books, one for ecclesiastical, the other for civil purposes. In the Beamish case before the House of Lords, you may remember that it was considered that the officiating clergyman from the earliest times not merely gave the sacerdotal benediction, but that he was a public functionary who was bound to see that there was no impediment, and that everything was right and properly concluded; then when he signs, and the parties sign, and two witnesses sign, you have complete evidence, and there cannot be afterwards such a scramble as we had, in the Mount Garrett case, as to a marriage which took place forty years ago, the devolution of property depending upon a stale and confused and obscure transaction. I cannot conceive why all should not agree to this one sensible uniform plan of the officiating clergyman recording the transaction at the time, the parties signing in the presence of witnesses, and there being a complete record of the whole thing.

580. (*Sir H. Cairns.*) Would you extend that to all denominations of clergymen; not merely to those who are in what we term "orders," but to laymen acting, as in some denominations they do, as clergy- men?——Under the second Act, known as Sir Edward Grogan's Act, 26 & 27 Vict. c. 27 s. 9, which was mainly intended for marriages of the several non- conformist denominations, it is provided that, "Every "minister, immediately after the solemnization of any "marriage by him, shall enter in both the duplicate "marriage register books of the place of worship in "which the marriage is solemnized the requisite par- "ticulars respecting such marriage; and every such "entry shall be signed by such minister and by the "persons married, and by two witnesses at the least; "and such minister shall, in April, July, October, "and January every year, send to the registrar of "marriages of the district in which such place of "worship is situate, on a printed form (supplied to "him by the registrar-general) a copy certified by "him, under his hand, of all entries in the duplicate "marriage register books in his keeping made in the "quarter of a year then last past, or certify under "his hand that no such entry has been made, as the "case may be."

581. I think that applies to all denominations?—— It is quite general, and includes all the cases in which the places of worship are registered as buildings in which marriages are celebrated; it imposes a penalty on the celebrant of the marriage if he neglects to record it in the registry.

582. (*Dr. Twiss.*) Are you aware whether there is any return from which we can ascertain what the difference is between the number of certificates which have been issued from the registrar's office and the number of certificates which have been re- turned? I presume we could ascertain from the registrars what number of certificates had been issued?——I do not know that the registrars keep any account of the issuing of certificates. They only help to fill them up; but they get no fee for it.

583. (*Mr. Monsell.*) As I understand, you propose in every instance to make the officiating clergyman or minister the registrar of marriage?——He is such under the first and second Act; what I propose is to extend that to cases under the third Act, to Roman Catholic marriages.

584. Would you allow the officiating minister to marry anybody he pleased without reference to reli- gion—take for instance, the case of a Presbyterian marrying a member of the Church of England, or a Roman Catholic priest marrying Presbyterians, would you have no creed limitation as to the persons that the officiating ministers were to be allowed to marry?—— The religious ceremony may be regarded as a matter for the parties themselves to choose; marriage is constituted by mutual consent, and the mode in which that is to be carried out, whether as a sacrament or by solemnization, or by some special ceremony, or by contract in the registrar's office, is rather a matter for the choice of the parties themselves. I think when you admit the principle of allowing parties to go to the registrar's office and complete their marriage there, it seems to be somewhat inconsistent to say that there should be any religious ceremony more

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requisite than another. It is a matter of religious freedom, and is a part of the consent of the parties. I am therefore against having these religious questions raised at all by any but the parties themselves. In point of fact by far the greater proportion of the marriages in Ireland are completed by a suitable religious ceremony. I observe that the number of marriages in the registrar's office without any ceremony is diminishing yearly. The largest amount was 1287, last year it was 1069, and supposing that there were between 40,000 and 50,000 marriages a year in Ireland, the number in the registrar's office would not be one-fortieth of the whole. In the greater proportion therefore the parties themselves treat it as a religious matter, and I think it is very important to respect that feeling of the people, and that we should encourage them to regard it in a religious aspect. At the same time I think it is a matter of perfect religious freedom as to what the ceremony should be, and that the law should not intermeddle with that part of it at all, further than to have a record made for the purpose of registry by the officiating clergyman.

585. (*Lord Chelmsford.*) That brings us at once to the question of mixed marriages; what is your opinion on that subject?——I think our law on that subject is in an unsatisfactory state. It has been made a felony in certain cases to celebrate such marriages; but the law never could be carried out satisfactorily. I have known cases where convictions have taken place that could not be acted upon afterwards. I think that part of our law ought to be amended.

586. (*Sir H. Cairns.*) Is it your view that two persons, a man and a woman of different denominations, one belonging to the Established Church and one to the Presbyterians, should be able to go either before the Presbyterian clergyman or a clergyman of the Established Church and be married?——It should not be encouraged, but at the same time remember that they can go before the registrar and get married, and I do not see anything more objectionable in principle in their going before a clergyman of some kind whom they may prefer.

587. Would you go further and say that two Presbyterians or two members of the Established Church should be able to go before a Roman Catholic priest?——When the principle of religious freedom is admitted, I cannot put any limitation to it, considered as a matter of principle.

588. I suppose you would think the same principle would justify their going before a clergyman of any of the other denominations mentioned in Sir Edward Grogan's Act, whether we call him a clergyman or not; you think they might equally go there?——I think if the parties consent to constitute the relation of husband and wife, the mode in which that is to be completed is a matter for themselves to determine, so far as the mere constitution of the marriage is concerned. It is a part of their mutual consent. I am speaking of the matter in the abstract.

589. Then, suppose they went further, and said, "We do not see that the religious element is so im-" portant, and we wish to go before a layman?"—— Here you let them go and be married before the registrar, who is a layman. There is no difference in principle; there is a question of state policy which involves other considerations.

590. That is what I want to know your views upon: they must choose between one of two things; they must either go to the registrar or else to some person who can in some way or other receive the title of a minister of religion, although it is utterly immaterial what sect he may belong to?——No doubt that principle of religious freedom as I laid it down might be carried to that extent, but the State has quite a right to say that for the protection of society, and for the purposes of the State, the marriages should be acknowledged before and recorded by such functionaries as the state may appoint; in other words that the formal evidence of the marriage should be completed in a prescribed manner. The presence of a public officer of the State is not for the purpose of celebrating a marriage, but to see that everything is right and to have the contract of marriage properly concluded. I therefore look upon the registrar not so much as marrying the parties as being a kind of public functionary attesting the completion of the marriage by the consent and acknowledgment of the parties themselves in a formal manner.

591. The difficulty that one sees in following the principle that you have laid down is this; if they go to the registrar, he is a person appointed by the State as a layman to be a witness and recorder of the ceremony?——Yes.

592. On what principle would you put it that two members, we will say, of the Roman Catholic church, should go to a Presbyterian minister and call upon him to be the witness of their marriage, and to record it, and that the State should be satisfied with that?——I think the State is not bound to be satisfied with that, because the State may properly select and specify the person by whom the marriage is to be recorded; that does not interfere with the freedom of marriage itself. That is really the principle of our Common Law; because, I take it that according to the Common Law a contract of marriage completed by the consent of the parties was *ipsum matrimonium*, though for the purpose of devolution and acquisition of property, and civil rights and privileges, it was required that there should be public solemnization.

593. (*Lord Lyveden.*) Supposing a member of the Church of England and a Presbyterian went before a Roman Catholic priest and were married, where would be the evidence of their marriage then? No one would think of looking for it in the Roman Catholic priest's records?——The evidence is a distinct thing from the marriage itself. The marriage, if in fact constituted between the parties is one thing,—the mode in which that is to be proved in a court of justice is another thing. When parties go before the registrar, he is the public functionary who attests that they have given a complete and binding consent before him, and then the State accepts that as the proper evidence that the parties have constituted the relation of husband and wife by free consent.

594. So far as the register is concerned; I understood you to put any other qualified person in precisely the same position as the registrar?——Not necessarily. That is for the State to decide. That is a matter of policy, a matter of State regulation. Where you have the ministers of the different recognized religious denominations you may properly confine their registration to the marriages of their own people, where one of the parties at least belongs to their communion, and the record is made at the time of the marriage. Provision has in this way been practically made for the great bulk of the population. In other cases, you provide for a registration by the registrar, and that may be proper for the purpose of registration, although some religious ceremony might also be used by the parties not contemplated by these Acts. It is a question of registration, and it may be quite proper not to confide the registration of the marriage to every celebrant further than is now allowed. That is a question of policy altogether, and distinct from the constitution of marriage.

595. But as regards the State, the State interferes, requiring a record of the evidence; how is the evidence preserved, the same in the one case as in the the other?——The State has quite a right to do this, to say in what mode a regular and lawful marriage shall be proved for the purposes of the rights of property and other privileges that are conferred by law.

596. (*Lord Chelmsford.*) I do not know whether it has occurred to you, in such a case as suggested by my noble friend, what species of evidence you would require beyond that which would be necessary under ordinary circumstances. Suppose such a case as this, not very likely to occur, at all events often, but supposing it to occur, that parties, for instance, a member of the Established Church and a Roman Catholic,

were to go before a Presbyterian minister and be married; of course, as has been observed, you would not look for the evidence of a marriage of that description from the Presbyterian; what species of evidence has it occurred to you will be required in a case of that kind?——It is a case not likely to occur often; you might in such cases require the parties to go before the district registrar and make the proper acknowledgment and have it recorded. Indeed, I may add, that there is nothing to prevent parties having a hybrid ceremony of that kind, in cases where they make the acknowledgment before the registrar and get him to record the marriage. The State in such a case does not in any way require or forbid the religious ceremony; it looks to the public and recorded acknowledgment.

597. (*Sir H. Cairns.*) It is one object of the State, in addition to the object of recording and preserving evidence, to have publicity attending a marriage?——Clearly; and therefore it may require a public acknowledgment before a public functionary, to whom it gives credit. The State is, I think, quite at liberty, if it is not bound to impose conditions with that view.

598. Of course we must deal with a case which, as Lord Chelmsford says, is not likely to happen very often, but after all it is for the cases that happen seldom that the law is most designed. We must deal with the case of two people wanting to marry with as much secrecy as is possible, we will say a member of the Established Church and a Roman Catholic; they want to marry surreptitiously, and they go to a Presbyterian minister; does not the power of taking that step contribute very materially to assist them in eluding all observation, and all publicity, *i.e.*, enabling them to go to a minister who has no connection with them, and who is not a minister with whom either of them has any religious affinity?——No doubt it does; but I think the way in which that may be discouraged is by the provision for registration. The evidence of such a clandestine marriage would be insufficient, you can provide for this in the law of registration; you do not absolutely nullify the marriage, but you do not recognize it as lawful for civil purposes in a court of justice.

599. I was not speaking of the evidence of the marriage after it has happened, I was speaking of the position of things before the marriage actually takes place. Does it not enable two persons who want to elude any opposition, and to court secrecy as much as possible?——Doubtless it does; but still, at the same time, if marriage is a relation constituted by the free consent of two competent parties, how can you absolutely prevent that? That is my difficulty.

600. What I want to ask you is where you would stop? We will say there are 10,000 ministers of all denominations in Ireland. We would begin with 10,000 registrars, then there will be civil registrars for every parish or neighbourhood; we will say 2,000 more, that would be 12,000 possible celebrants of marriages in Ireland. If any couple who were going to be married were allowed to take their choice of the whole 12,000 up and down the country, how are you to ensure any kind of publicity in favour of those who may have an interest or a proper right to stop, or to expostulate against the marriage?——I do not much object to the way in which it is done under these Acts, nor do I desire to complicate the matter by any substantial alteration of this code as to the power given to the officiating ministers of the various churches and denominations as to celebrating and registering marriages. The other question as to the nullity of the marriage is a distinct and different matter. The code assumes the power of State regulation, and I cannot say that there is anything unreasonable in the restraints imposed generally by the State; except that the law about mixed marriages ought, I think, to be amended.

601. As regards making the marriage null?——Yes. I think there is the substance of a very good code in these Acts if they were cleaned up and made consistent, and if the Roman Catholic clergy would agree to record their marriages in the duplicate register books.

602. You are aware that the essence of the code you refer to is, that the ministers who celebrate the marriages are only to do it between parties of their own congregations?——At least where one of the parties is of their own communion; such is the marriage that the law provides for, and I cannot say that it is unreasonable. That would still leave the other question untouched, as to making any marriage which has been completed by consent, absolutely null and void.

603. Supposing we get to this point, that any one of those 12,000 persons might become the celebrant of any marriage in Ireland; how could you stop between that and the Scotch system, which enables any two people to go before any witness and marry any one they choose to take?——I never could see how to stop in any other way than I have been pointing out. I always thought that the Scotch system had too wholesale an attack made upon it, considered in the abstract, because if two parties can constitute marriage by consent, the State cannot say that what is a marriage is not a marriage at all; but what the State can do is to say what marriages it will recognize for its own purposes, and then if parties do not choose to conform to the law they shall not get the privileges which conformity secures.

604. (*Lord Chelmsford.*) If a mere consent will establish the *status*, then there is the relation established, and all the consequences must flow from it?——But the law has a right to say what those consequences shall or shall not be. The relation is established by the two parties if they are competent so to contract. It is a relation divinely appointed, and the only question for the State is, what conditions it shall impose for the devolution of property, and the conferring of civil privileges, and so on. The State has a perfect right then to impose these conditions of registration, to direct that there shall be previous notice, publicity, and the like; but is it necessary to go further, and to say that there has not been a marriage at all, although there has been complete consent without these conditions. It may be true that it is not a regular marriage in the eye of the law for the purposes of law, but I think it leaves it in its essence just where it finds it.

605. Do you think it would be desirable to establish the validity of a marriage by consent *per verba de præsenti*, in the presence of witnesses, not before a registrar or any constituted officer?——No, I do not say it would be desirable at all as a matter of policy; but I say that if we recognize a Scotch marriage here and in Ireland, and are obliged to recognize it, that very fact shows that it is in its essence a marriage. If it is a marriage there, it is a marriage in every part of the kingdom, and when a marriage in Scotland comes before us in courts of justice, we are obliged to recognize it as a valid marriage.

606. (*Sir H. Cairns.*) Then your view is that in any part of the kingdom the State has no right to say that the contract between the persons themselves is not a complete marriage?——It has a right to say that it is not sufficient for its own purposes, but whether it has a right to say it is not a marriage in any sense is a very different question.

607. Whether there is a witness or not?——That cannot affect the essence of the transaction. The fact of consent must be established by sufficient evidence

608. You say "for its own purposes." I understood you that the only qualification was that the State had a right, not to interfere with the contract, not to deny the validity of the contract, but to require that the parties to it or the bystanders should preserve certain evidence of it?——I say that I admit the right of the State to define what marriages it will recognize as lawful, but that does not require or imply that the State should pronounce any to be absolutely void.

609. The former then is all the State has a right to do?——It is enough for all practical purposes to have the

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right which I admit it to have. The other is a difficult, abstract, and somewhat speculative question.

610. But with regard to all other contracts, is not the State in the habit of interfering, and saying, according to their greater or less solemnity or importance, in a public point of view, they will require certain conditions to constitute them a contract at all ?——Marriage differs from any other contract, for it constitutes a relation of Divine appointment ; it is the parent of civil society.

611. In the case of other contracts of importance, does not the State step in and say it shall not be possible in the territory of this State to make a contract on such a subject except in a particular way ?——The State does that because those contracts relate to property, or constitute civil relations only, which are altogether regulated by positive law.

612. Sometimes, and sometimes not ; for example, contracts of service ?——That is a merely civil relation, quite different from marriage. Whenever the State administers rights of property or civil privileges then it has a right to say on what conditions these shall be given. That is its own policy.

613. Supposing that were so, is it not the case with regard to marriage, that it is impossible to have marriage without affecting property ?——You may have one form of marriage and legitimacy in Scotland that does not affect landed property in England. It is a question of positive law ; of the law of the land, in the strict sense. The enjoyment of property is altogether a matter for State regulation. I cannot exclude the consideration that the relation is one of Divine appointment, and it may be said to be (although I speak as a Protestant), in a large and general sense, sacramental, the type of a higher union. It differs from all kinds of civil contract. Parties who are competent and free have, *primâ facie* at least, a perfect right to constitute that relation. They are responsible to God for it ; and though it is quite another matter to say upon what conditions civil rights shall be conferred and property enjoyed by the law of the State, I have been strongly impressed with the difficulty of admitting that the State has the power to undo what parties have done in that way. Marriage is the parent of civil society, as Lord Stowell has taught us.

614. With regard to its being a divinely-appointed relation, how would you deal with the question of minors ; where does the divine law operate for the purpose of saying at what age persons shall be able to constitute the contract ?——I have been speaking of the case where the parties are confessedly competent and free to contract.

615. How is the competency to be judged of; by the law of the country, or from some other source ?——That is a large and difficult question, and would involve a wide discussion. When is a young person fit for confirmation ? The truth is, that when we speak of parties competent to contract, we mean, to exercise their will responsibly.

616. But then the law of this country says that no person shall be competent to exercise their will till they are 21, and the law of Scotland says 14 and 12 ?——I am quite aware of that, and I have not overlooked that objection, which I have heard before, and it is very forcible. There are great difficulties in either view of the abstract question, but practically if the State has got a right, with reference to all the rights of property and such other matters, to impose conditions, I think that is enough ; I think beyond that it is a question of a very intricate and delicate nature and very difficult, and I both feel and admit the difficulties which have impressed me strongly, but I give you without reserve my own views.

617. What conditions do you think the State ought to impose ?——I have said before that I think the State ought to impose conditions to secure deliberation, publicity, and conclusive evidence ; those are what are in substance required under the first and second Acts, to which I have referred.

618. (*Mr. Monsell.*) In the case of those conditions not being complied with, would you consider that the children ought to be legitimate ?——That is putting the same question in a different form ; if the marriage is not void, the children should be legitimate.

619. Then if legitimate, that they ought to be empowered to inherit property ?——When you come to the dealing with property, that is a matter of positive law ; children might be legitimate in Scotland who could not inherit land in England.

620. Still I think we should very much like to hear your views upon that subject ?——Society has many interests which require to be guarded, especially such as relate to the enjoyment of property ; that is a matter I think of social policy altogether. It is quite allowable then to say upon what terms property is to be enjoyed, and so far to limit the consequences of marriage.

621. Then I venture to ask you, in your view, what are the terms that the State ought to impose ?——I think, what I have more than once pointed out beforehand, that there should be publicity, deliberation, and a record of the marriage.

622. In what way could this notice be given in the case that the noble lord in the chair put to you, in the case, for instance, of a member of the Church of England and a Roman Catholic going before a Presbyterian minister, a person with whom neither the one nor the other had any relation in the world, in that case what conditions would you impose ?——I said that such cases might be effectually met by the provisions for notice and registration. If these parties think fit they can avail themselves of the provisions by which the marriage can be registered in the registrar's office as a marriage before him. The notices at present are given to the district registrar where there is not a recognized mode of ecclesiastical publication.

623. (*Sir H. Cairns.*) On what principle do you think it is that the State should interfere to prevent parties entering into the contract imprudently, if it is a contract within the competency of the parties ?——It seems to me that the State may make it mandatory upon them to give a previous notice, or to have a previous publication of it, either upon the grounds which I have already endeavoured to explain, or it may be that although the relation is, in its true ideal, of Divine appointment, the mode of constituting the relation is a matter of human arrangement. I have said that I fully admit the difficulty of the abstract question.

624. If they set at defiance all that the State commands on the subject, still you think the contract should be good ?——Good in a qualified sense. I must say that where there is a general law it has a general effect in regulating conduct. In order to execute it, it may be made penal for the parties to disobey its injunctions. You would secure a great deal of conformity by that.

625. Will not the case where you will not have the conformity be just the case where you want the conformity?——I do not agree to that ; if you have a general law with proper penal sanctions, it would generally be conformed to by the natural action of law on the general community.

626. (*Dr. Twiss.*) In fact you would distinguish between irregular and invalid marriages ?——Yes, that is a fundamental distinction well settled, and known to the law from the earliest time.

627. (*Lord Lyveden.*) What evidence of consent would you require where there were no witnesses?——There must always be sufficient evidence to establish consent as a matter of fact. It is the policy of the State in these Acts of Parliament to have the marriage attested by two witnesses, recorded by the clergyman, and acknowledged by the signature of the parties. That seems a very wise provision of the State, to say we must have that evidence of the marriage as a lawful marriage for the purposes of the State.

628. I thought you said you would limit marriages by consent without witnesses ?——If the consent is

proved by sufficient evidence, the marriage is proved. All that I have said on that subject is, that if there has been a complete and free consent of competent parties, I consider that marriage has been constituted. But that is a totally different question from the question of policy as to what are regular and lawful marriages in the view and for the purposes of the State.

629. (*Lord Chelmsford.*) Still you see a marriage by consent although not in the presence of witnesses must establish the *status* of the parties; and from that *status* flow all the consequences of the rights and duties?——That requires qualification. I should not say "all the consequences of the rights and "duties," but all the consequences which the policy of the law allows. A lawful heir in Scotland is not necessarily an heir of land in England. That was decided by the House of Lords.

630. Then the marriage which you have been suggesting would be nothing more than lawful concubinage?——Well, call it what you like, I should rather call it irregular marriage. I know some very great authorities, such as the late Lord Campbell, have said that they did not like that distinction between marriages in the sight of God, and marriages in the eye of the law; but at the same time I believe that the distinction is one which may be made under certain circumstances, and with cautious limitations.

631. (*Sir W. P. Wood.*) Do you recommend a double sort of marriage, that is to say, one marriage recognized by the State, and another which would be a marriage for every other purpose except being recognized by the State?——I have merely been mooting the abstract question, but I do not think it is necessary to go more into it. In Ireland our system now is, that in cases where there is a religious celebration the officiating minister registers the marriage when it is celebrated; and the registrar, in the cases of acknowledgement before him, in his office. There is the exception of the case of Roman Catholic marriages. What I should advise is to have the system made consistent and complete by making the officiating ministers in the case of Roman Catholic marriages, as in the other cases, keep a book furnished by the registrar general, for him and the parties to sign, in place of making the husband the responsible party to have the certificate of the marriage sent to the registrar.

632. My question rather went to this: You spoke of a marriage without witnesses, which you would not require the State to recognize, but which yet should be deemed a marriage. That would be a species of marriage of which we know nothing in our present law?——Yes, if it takes place in Scotland.

633. The State recognizes that marriage in Scotland?——Yes, and recognizes it here and in Ireland in case of a Scotch marriage.

634. (*Lord Chelmsford.*) Here entirely; provided it is a valid Scotch marriage, the parties would bring their *status* with them wherever they went?——It is recognized as a Christian marriage throughout the Christian world. I am not suggesting to the Commission to import the Scotch law into England and Ireland, but at the same time I have felt the difficulty of admitting that the State had power to say that such a marriage, which is recognized throughout the Christian world as a Christian marriage, is not a marriage at all, if it take place here; but I freely admit (which probably for all practical purposes is enough) that the State here has the right to require, for the purpose of civil privileges, that marriages shall be celebrated and registered in the way that it requires or sanctions. The other is rather an abstract and very difficult question, and I have said that there is a view of it in which the particular mode of constituting marriage may be regarded as of human arrangement, and therefore proper to be regulated by the State.

635. (*Sir W. P. Wood.*) Even if a man married a woman, whose previous marriage had not been recognized by the State, he would not be indictable for bigamy?——Bigamy is a statuable offence, and for the purposes of bigamy the legislature may say what is marriage. It is a matter *positivi juris* where the offence is statutable. In several of the cases of bigamy, if you invert the order of the two marriages the offence is got rid of.

636. (*Lord Chelmsford.*) Will you allow me to ask, with regard to your opinion as to abolishing the law with respect to mixed marriages, would it be desirable to abolish the law unless you could require the Roman Catholic priest to make a register of the marriage?——I am quite of opinion, that if you abolish that law the marriages should be registered, but I believe the Roman Catholic clergy object to the requiring of any preliminary notice.

637. (*Sir W. P. Wood.*) You mean giving notice by banns?——Or to the registrar. In the case of mixed marriages certainly some notice beforehand is very important, because they are more apt to be sudden and secret. There may be a difficulty in drawing a distinction between them and the ordinary marriages of Roman Catholics as to a previous notice. I have understood that with regard to the doctrine of their church, when the priest finds any of his people living in sin it is his duty to marry them, and they therefore object to the necessity of a previous notice, in drawing a distinction between mixed and other marriages.

638. (*Lord Chelmsford.*) There seems to be nothing to consider with regard to the marriage law of Ireland, except the system of registration and these mixed marriages?——The registration is the main thing; to get that completed and uniform.

639. Is there any other subject to which you have turned your attention?——There are some things through the Acts treated with inequality; my view is, that I would put all as nearly as practicable under the like State conditions. In the first Act, the registrar's certificate is made a substitute for banns, and on the production of such certificate a clergyman of the Established Church is bound to perform the marriage, as if the banns had been published, whereas the system of the Presbyterians is complete in itself, and there is no interference by the registrar with them at all. Then again, there are some peculiarities with regard to the Jews and the Quakers.

640. Do you not think it would be desirable if the ceremony, the notice, and everything preceding the ceremony commences in the registrar's office, that it should be concluded there; and, if it begins in the Church, that it should be concluded in the Church, that they should be kept entirely separate from each other?——I think there is no objection to that; it seems to be very reasonable. The registrar's licence might be done away with, because in all cases the declaration, that there is no lawful impediment, &c., must be made, and accompany the notice to the registrar. I think we must put confidence in the officiating clergymen of the recognized religious bodies, and by making it the duty of the officiating minister to keep the record, and make a duplicate registry for public purposes; that would seem to me to be the basis of a simple and uniform system. It is important, I think, instead of trying to be complete in theory, and straining after mere symmetry of system, to adapt the law to the settled convictions of the people; to do as little violence as one can to their religious feelings, and to make marriage to be regarded, not as a bargain at a fair or market, but as having a peculiar religious element in it. If you could get the Roman Catholics to adopt the plan which I have urged, it would be most desirable. I can understand the objection in certain cases as to the necessity of giving notice, and all that; but what the ground of objection is to the priest signing the book, and making the duplicate registry for the purpose of being an authentic record of the marriage, I do not understand at all.

641. Unless it was in some way enforced by a penalty, it would not be regarded, perhaps? You have told us that it is the husband who is obliged to transmit the certificate under a penalty?——Yes, that is the present law.

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642. Perhaps the Roman Catholics would object to the priest being substituted in that duty for the husband, and to be liable to a penalty, which is the only way of making a people regard a duty imposed upon them?——You might give them a fee for registration.

643. They do not like to be bound up with the State?——Their marriages are in such a large proportion that it stops the preparation of a general law.

644. It is the only chance we have of getting it, supposing they would consent to that, to let their priests be their local registrars?——If you remove the registrar's certificate from the Established Church, and the registrar's licence from the others, and amend the law as to mixed marriages, and get the Roman Catholic clergy to register their marriages as the other clergy register the marriages which they celebrate, the Irish law upon the whole would be satisfactory I think.

645. In fact it is exactly similar to the English?——It is in many respects similar to the English, but not altogether.

646. The Roman Catholics appear to be very unwilling to submit to such a regulation?——That is what is wanting to make the law complete, and it is a great *desideratum*.

Adjourned.

REGISTRATION OF MARRIAGES, IRELAND.

TABLE I.—Showing by Provinces the NUMBER of MARRIAGES REGISTERED in Ireland during the Years 1864 and 1865, under the Provisions of the 7 & 8 Vict. cap. 81, and 26 & 27 Vict. cap. 90, and the Proportion per cent. of Marriages to the Population, according to the Census of 1861.

PROVINCES.	ROMAN CATHOLICS.					MEMBERS OF THE ESTABLISHED CHURCH, and of ALL OTHER PROTESTANT PERSUASIONS.				
	Roman Catholic Population, according to Census in 1861.	Marriages *registered* under 26 & 27 Vict. cap. 90.				*Protestant* Population, according to Census in 1861.	Marriages *registered* under 7 & 8 Vict. cap. 81.			
		1864.		1865.			1864.		1865.	
		Number.	Per-centage to Population.	Number.	Per-centage to Population.		Number.	Per-centage to Population.	Number.	Per-centage to Population.
LEINSTER -	1,252,553	5,804	·463	6,006	·480	204,091	1,602	·785	1,578	·773
MUNSTER -	1,420,076	6,318	·445	7,639	·538	91,546	759	·829	715	·781
ULSTER -	966,613	3,390	·351	4,078	·422	947,119	5,974	·631	6,460	·682
CONNAUGHT -	866,023	3,307	·382	3,966	·458	46,843	252	·538	246	·525
TOTAL -	4,505,265	18,819	·418	21,689	·481	1,289,599	8,587	·666	8,999	·698

TABLE II.—Showing the NUMBER of MARRIAGES REGISTERED in IRELAND in the Years 1862, 1863, 1864, and 1865, under the Provisions of the 7 & 8 Vict. cap. 81, specifying the mode in which they were performed.

Mode in which Marriages were performed.	Number of Marriages *Registered*.			
	1862.	1863.	1864.	1865.
According to the rites of the Established Church - - - -	4,564	4,514	4,761	5,029
In Registered Presbyterian Meeting-houses - - - - -	2,489	2,362	2,514	2,718
In Registrar's Offices, Civil Contract *without any religious ceremony* - -	1,287	1,200	1,109	1,069
In Registered Buildings* - - - - - - -	79	101	192	159
Between Members of the Society of Friends - - - - -	8	11	10	19
Jews - - - - - - - - - - -	3	—	1	5
Total - - -	8,430	8,188	8,587	8,999

* "The Registered Buildings belong to the Wesleyan Methodists, Reformed Presbyterians, Independants, Baptists, Seceders, Moravians or United Brethren, and the Methodist New Connexion."

NOTE.—In cases where a Superintendent Registrar's district (or Poor Law Union) extends into two provinces, it has been assigned wholly to that province in which the greater portion of the population is located

The religious persuasion of 4,103 persons was *not stated* by them on the Census Returns of 1861, (Form A.); they have not, therefore, been included in the population given in Table I.

The *final revision* of the number of Marriages for the year 1865 has *not yet been completed*; but it is not anticipated that any change of importance will be necessary in the figures here given.

The *total* number of marriages REGISTERED in Ireland during the year 1864, gives a ratio of 1 in 212, or ·47 per cent. of the population in 1861, and the number REGISTERED during 1865, a ratio of 1 in 208 or ·48 per cent.

The marriage rate in England (1838 to 1863) *averaged* ·820 per cent. (*See the 26th Annual Report of the Registrar-General for England*, p. ii.); the rate in Scotland for the year 1862 was ·667, and the *average* for the seven previous years was ·685 per cent. (*See the 8th Annual Report of the Registrar-General for Scotland*, p. xvi.).

WILLIAM DONNELLY,
Registrar-General.

General Register Office, Dublin,
April 16th, 1866.

Saturday, 28th April 1866.

PRESENT:

RIGHT HON. THE LORD CHELMSFORD.
RIGHT HON. THE LORD LYVEDEN.
RIGHT HON. THE LORD JUSTICE CLERK OF SCOTLAND.

THE SOLICITOR GENERAL FOR SCOTLAND.
TRAVERS TWISS, ESQ., Q.C., D.C.L.

LORD CHELMSFORD IN THE CHAIR.

JAMES MUIRHEAD, Esq., examined.

J. Muirhead, Esq., Advocate.

28 April 1866.

647. (*Lord Chelmsford.*) I believe you are a member of the Scotch Bar and Professor of Civil Law in the University of Edinburgh?——I am.

648. We know that you have turned your attention to the laws of marriage in Scotland and the operation of those laws, and you are probably prepared to give the Commission some information on the subject, which I am sure will be very valuable as coming from you?——I am not sure what exactly is the scope of the evidence that the Commission would desire from me. If you will permit me, I may say that I am one of those who do not regard the law of marriage in Scotland as by any means satisfactory. I think it is desirable that for the sake of the prevention of fraud, for the protection of the rights of the issue of marriage, and for the preservation of evidence of it, there should be some formalities which should be absolutely requisite. I think at the same time it is indispensable that those formalities, supposing them to be absolutely requisite, should be exceedingly simple and exceedingly inexpensive; otherwise I conceive that to make the observance of them indispensable would really be to put a premium upon immorality. The more you increase the artificial requisites of such a contract or relationship, the wider do you open a door to vice and give room for fraud. I take it for granted, seeing as I do a *precis* of the Scotch law of marriage on the table, that the Commissioners are perfectly well informed generally what is the doctrine of the law of Scotland on the subject, and that it is quite unnecessary that I should go over it.

649. I believe the Commissioners have been fully informed of that?——But permit me to say, in two or three words, that I take it to be this,—that the law of Scotland, so far as concerns the age of the contracting parties, requires nothing more than that they should be respectively of the ages of 12 and 14; that it requires no consent of parents; and that the marriage itself may be contracted either regularly in the face of the Church, which is the common mode of contracting it, or it may be contracted clandestinely or irregularly, clandestinely when, without previous banns, there is a ceremony at which an unauthorized party is the celebrator, and irregularly when there is no party celebrator. And, if you will allow me to say so, the view taken of the modes, or what are sometimes called the modes, in which marriage may be constituted irregularly in Scotland is, I think, not quite accurate. It is occasionally said, though I do not suppose the Commissioners entertain that view, that there are three ways in which marriage may be irregularly constituted,—by consent *de præsenti*, by promise followed by *copulâ*, and by habit and repute. Now I take it that the two latter are not really modes of constituting marriage, but only evidence of marriage constituted in the first of those three ways, namely, by interchange of consent *de præsenti*. Promise with subsequent *copulâ*, according to the doctrine of the canon law, and, I think, according to the doctrine of our own text writers and of our judges, merely raises a presumption of consent *de præsenti* which the law does not allow to be redargued.

650. I always understood that the promise, *subsequenti copulâ*, was considered as a marriage established by the *copulâ* from the time of the *copula*?——The doctrine of the canon law upon that subject is that it raises a presumption that consent has been interchanged between the parties *de præsenti*, a presumption which the law does not allow to be displaced. But the real constitutive of marriage, I take it, in that case, is an interchange of consent *de præsenti*. I think habit and repute is just another way of proving the interchange of consent at some indefinite period upon which it is impossible to condescend.

651. (*Dr. Twiss.*) In other words, there is no marriage till the *copula* takes place?——I beg your pardon; not quite so. I say that interchange of consent between the parties *de præsenti* makes marriage. Sometimes it is impossible to prove that there has been that interchange *de præsenti;* but it may be possible to prove that there has been a promise of marriage to take place at some future period, and that sometime after the promise there has been a *copula*. The doctrine of the canon law was that where those two things concurred, the promise and the subsequent *copula*, there the presumption arose that a present interchange of consent had taken place at some time between the promise and the *copula*.

652. (*Lord Chelmsford.*) I ventured to say on a previous occasion, with regard to the question of marriage by habit and repute, that that did not constitute marriage, but was evidence of the marriage, as you now treat it?——It is so.

653. (*Lord Justice Clerk.*) Does it not come to this, that that which makes marriage is the interchange of mutual consent?——So I take it.

654. And that may be either proved directly by written or verbal direct acceptance of each other as husband and wife, or may be presumed either from conjugal cohabitation with undivided repute, or from promise with subsequent *copulâ*?——That is exactly the view I take of it; that the interchange of consent may be proved either directly or inferentially.

655. But that which makes the marriage is consent?——Yes; and that consent *de præsenti*.

656. (*Dr. Twiss.*) Which is presumed on the evidence in the two latter cases?——Yes. I think I may safely say that the people of Scotland are by no means enamoured of irregular marriages, or have any fervent admiration of them. If they have hitherto shown themselves somewhat indisposed to part with the power they have of contracting marriages thus irregularly, I think that indisposition on their part may be attributed to two reasons. One of them is, that the solemnization of a regular marriage is somewhat expensive, and an irregular marriage is better than none at all: they prefer the irregular marriage to no marriage. Another reason, I think, is this, that the suggestions for an alteration, at all events of later years, have always been pressed upon them from England; and the thistle, you know, declines to be rudely handled. All the more, I think, do they feel disinclined to see a change introduced into their law at the suggestion of England, for this reason, that it is, perhaps more frequently English people than Scotch people that have abused the power of contracting irregular marriages. I think the abuses have been from England rather than from Scotland. I recollect some years ago,—I am sorry I have not the statistics,—a committee of the General Assembly of the Church of Scotland was appointed to consider the question; I think it was when Lord Brougham's Bill was before Parliament; Dr. Stark, who is in the Registrar-General's department in Edinburgh,—he is, I believe, secretary of the Census subdepartment, and an able statist,—was convener of that committee. He applied himself to the collecting of statistics from the border parishes; and those statistics,

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which he laid before the General Assembly on that occasion, were very striking. Speaking roundly, my impression is this, that of the marriages contracted clandestinely for some years prior to the labours of that committee about 97 or 98 per cent. were marriages between English persons who had come across the border to take advantage of the system, while it was not in more than 2 or 3 per cent. of the cases that the contracting parties were Scotch. The other reason I mentioned was, that a regular marriage was somewhat expensive, and people would rather have an irregular marriage than none at all. I speak without book, and merely from such information as one can pick up in the absence of proper statistics; but I believe that the cost of a proclamation of banns is a very serious consideration to poor persons entering into the relationship of marriage. I am informed that the ordinary charge of a session clerk for the proclamation of banns is, on an average, 15*s.* if the banns are proclaimed on three separate Sundays, and a guinea if they are thrice proclaimed on the same Sunday; and I am told, in regard to Lanarkshire and the miners there, that they have a curious preference for having their banns proclaimed three times on one Sunday, which is contrary to the orders of the Church, but still is very common. They think there is something degrading in having the banns proclaimed on three consecutive Sundays, although that could be done for less money than having them proclaimed all at once. Be that as it may, I think it admits of no question that the cost of the proclamation of banns is a very considerable obstacle to poor persons who have in view the entering into the bond of matrimony.

657. (*Lord Chelmsford.*) I believe an irregular marriage is an offence against the Scotch law, is it not?——It is, in some cases; namely, where there is a party celebrator who has no authority for so acting.

658. (*Lord Justice Clerk.*) The Act of 1661 seems to strike against celebration?——Yes; that is, I think, the generally received doctrine.

659. (*Lord Chelmsford.*) There used to be a mode, I do not know whether it continues up to the present day, of getting a record of such marriages by a friendly complaint before a magistrate, and the parties being fined, and then an entry of that fine being made?——That was done; but I think Lord Brougham's Act has provided an easier remedy. The parties are entitled to apply to the Sheriff, within three months after contracting the irregular marriage, for a warrant of registration, if they desire that it shall be registered; but the application must be within that time.

660. (*Dr. Twiss.*) Can you state what the ordinary expense of the regular solemnization of the marriage is in addition to the proclamation?——I do not think there is anything in addition. I think any fee paid to the clergyman is a matter altogether within the discretion of the parties. I believe the fees that can be exacted do not extend beyond those for the proclamation of banns.

661. (*Lord Justice Clerk.*) Are you quite sure you are correct about the expense of proclamation?——I have inquired in a great many quarters. In some places the sum is not so large; it goes as low as 5*s.* or 7*s.* 6*d.* in some places; but from inquiries I have made it seems to me that about 15*s.* is ordinarily the charge.

662. (*The Solicitor General for Scotland.*) I was under the impression that it was about 1*s.* for proclamation for three Sundays, and 1*l.* if two of them were dispensed with and all made upon one day, but I am very apt to be in error?——I was assured that 15*s.* in many of the parishes was the common charge where the proclamation was made on three consecutive Sundays, and a guinea where it was made three times on one Sunday.

663. (*Dr. Twiss.*) In regard to the 15*s.*, do you think that is the case when both the parties belong to the same parish, or is that the case where the parties are in different parishes, and where there is a double proclamation and two fees paid at once?——I should think that the proclamation fees are charged twice when the proclamation is made in two parishes, the parish of each of the intending contracting parties; I should think the same or corresponding fees would be exacted in each parish.

664. Then in some cases it would be as much as 2*l.*?——In some cases it would. I do not say, however, that the fees would be doubled if both parties resided in the same parish. There the single proclamation would be sufficient. I said that it is not my opinion that the Scotch people really have any very fervent admiration of irregular marriages; and, looking into the history of the matter, and the action of Parliament and the Church, both before and after the Reformation, in regard to marriage, I find that their efforts have been constantly in the direction of discountenancing irregular unions. I have here a note, if the Commissioners will allow me to refer to it, of one or two excerpts from the Acts of the General Assembly of the Church of Scotland, indicating what has been the feeling ever since the Reformation. I find that in the rubric of the marriage service in the First Book of Discipline, in the year 1561, it was provided, that after banns had been thrice published, the parties were to assemble in church at the beginning of the sermon, and the minister at the time convenient was to put it to them whether they knew of any impediment to their union; and if none were declared, he was then to put it to the congregation in these words: "If there be anie of "you know that either of these parties be con-"tracted to any other, or knoweth anie other law-"full impediment, lett them now make declaration "thereof." This indicates that the law immediately after the Reformation was very much the same as it was immediately before it. The efforts of the Church were, as I say, directed to discountenancing irregular and clandestine marriages. In the First book of Discipline this passage occurs:—"In a Reformed Church marriage ought not to be "privately used, but in open space, and presence of "the Church. Also, for avoiding dangers, we think "it expedient that the banns be proclaimed three "Sundays, unless the persons be well known, and "that no suspicion of peril can arise, and then the "proclamation be shortened at the discretion of the "minister; but in no ways can we allow marriage "to be secretly used, how honourable soever the "persons may be; and therefore esteem Sunday, "before the noon, the most convenient time for the "celebration of marriage, and that it ought not be "used on any day else without the consent of the "ministry." In 1570 the Assembly ordained, "that "all marriages be made solemnlie, in the face of the "congregation, according to the ordour publicklie "establischit; and als inhibites, all ministers and ex-"horters, that none of them solemnize marriages of "any persons of uther congregationus not their owin, "without sufficient testimonials from their ministers, "or else licence ask it and given be the contracters." In 1579 the Assembly gave permission to celebrate marriage on a week-day, "bands beand thrie severall "Sondayis lawfullie proclaimit." Two years later, in 1581, ministers were prohibited from celebrating marriages in private houses, under pain of deposition. In 1598 the order about proclamation of banns was renewed, with a declaration that "in case of con-"traveening of the same, the minister be deprived "of his office, and the parties ordeaned to satisfie the "Kirk by public repentance." Finally, in 1602, "the Assemblie ordeaned that no marriages be cele-"brated earlie in the morning, or with candle-light; "and finds likewise that it is lawfull to celebrate the "band of matrimonie upon a Sabbath-day, or any "other preaching day, as the parties shall require." There are instances recorded of clergymen being deposed from the office of minister for having celebrated marriages in private houses. In 1567, and again in 1587, there are such cases recorded. In 1595 the Assembly passed an Act nullifying "marriages made "be excommunicat priests, or uthers that has served "in the Kirk, and are deponit from their office, or

by privat persons," and appointed certain members "to travell with the Commissars of Edenburgh that "they decide according to the saids conclusions." The Act, which was probably *ultra vires* of the Church, is mentioned in the Book of the Universal Kirk, and also by Calderwood. After the restoration of the Presbyterian Church government, upon the overthrow of Episcopacy, the Commissioners of the Kirk petitioned Parliament "to appoint some good course "whereby marriages maid out of the kingdome, or by "depryved ministers or seminarie priestes, and marriages maid without the consent of parentis by "those who are *sub tutela parentum*, may be restrainit." The result of that was an Act, passed in 1641, which did not go the whole length desired, but to a certain extent mitigated the evil, or attempted to do so.

665. (*Lord Justice Clerk.*) Is the Act of 1641 the same as the Act of 1661?——There are considerable additions in the subsequent Act.

666. In the Act of 1641, the 11th Charles I., there is nothing contained that is not in the Act passed at the time of the Restoration?——I believe not.* Perhaps I may be allowed to make another reference to what was done by the Church. I find that in 1690 an Act of Assembly was passed, recommending Presbyteries "to take notice of all ministers within "their bounds * * * celebrating clandestine marriages, without due proclamation of banns, and to "censure them." In 1699 the Assembly enacted, "that, before any proclamations be made, the names "and designations of the parties to be married, and "their parents, tutors, or curators, if they any have, "be given up to the minister of the bounds in which "any of them live and reside, that thereby it may be "known if their parents and friends give consent "thereto; and that the minister, being satisfied "herein, order the proclamation to be made three "several Sabbaths, which, when made, shall be "immediately before Divine worship begin in the "forenoon; * * * and this to be attested to the "minister that marries them; with certification of "the censures of the Church against the aggressors "herein." In 1784 another resolution was passed very much to the same effect, in fact repeating the same provisions. So that I think it is obvious from the quotations I have made, most of them taken either from Calderwood's Church History or from the Book of the Universal Kirk, that the reformers of the Presbyterian Church, down at all events to the beginning of the last century, were strongly opposed to irregular and clandestine marriages, and did what was in their power to discountenance them; and that they even went the length of requiring that notice of intended marriages should be given to the parents or guardians of the parties, that they might have an opportunity of expressing their consent or withholding it.

667. So far as I have been able to follow those citations they seem all to be directed against the celebration of clandestine marriage?——Yes, with the single exception of requiring the names of parties.

668. Requiring a proclamation of the banns you mean?——And requiring that the parents and guardians should consent to a regular marriage. Irregular marriages uncelebrated do not seem directly touched by them.

669. (*Dr. Twiss.*) May I ask by what authority are those fees taken upon proclamation? Of the General Assembly, or what authority?——I am not able to say. I fancy it is by use and wont. I cannot say that it is anything more.

670. Customary fees in fact?——Yes. There was a bill introduced into Parliament in 1754 for altering the marriage law of Scotland. I have never been able to see a copy of it, and I do not know what its provisions were. It was in the year after Lord Hardwicke's Act was passed. The journals of the House of Lords, under date 1st April 1754, bear that the Lord Chancellor acquainted the House that he had received the bill from the Judges of the Court of Session; and it was some time after that read the first time. The title of the bill is on the journals. It was introduced on the motion of the Bishop of Worcester, and the title of it was this, "An Act for the better prevention "of Clandestine Marriages in that part of Great "Britain called Scotland." That stands in the House of Lords' journals, 23rd April 1755. There was a book recently published in Germany, a most elaborate history of the forms of contracting marriage in almost all the countries of Europe, in which the bill is specially referred to by the author in treating of the law of Scotland. He not only mentions it, but says more on the subject of it and the reasons why it was not proceeded with than I have been able to state. Unfortunately, I have not been able to find a copy of the work in any of the Inn libraries. It is called "Das Recht "der Eheschliessung in seiner geschichtlichen Ent-"wickelung;" the author is Dr. Emil Friedberg, the editor of Keller's "Pandecten." It was published six months ago, and is a most instructive book, giving not only the history of the different marriage laws of Europe, but the present state of every one of them. I do not know that any further legislative attempt at reforming the marriage law of Scotland was made until Lord Advocate Rutherford's bill was introduced. That bill, as the Commissioners are no doubt aware, was referred to a select committee and evidence was taken on the subject. It was not proceeded with. There seemed to be a great opposition in Scotland to it, and it was not pressed. The only other legislative measure that I need refer to is Lord Brougham's Act, commonly known as the Gretna Green Act. But now in Scotland we have been asked to consider the propriety of reforming our law, and it has been very much pressed upon us that we ought to adopt the English system or something very much akin to it. The people of Scotland are averse to accepting the English system as it stands. I think they would be inclined to go a considerable way in modifying their own system for the sake of assimilation of the law; because, in a matter such as that of marriage, it seems to be in the highest degree desirable that all parts of the kingdom should be under one uniform law. I think the objections to the English system, as it exists at present, are some of them rather serious. I think, for example, that it is an objectionable feature in it, that the consent of parents and guardians should be required in all circumstances where the parties are under the

* *Note added by the witness on revisal, by leave of the Commissioners.*—Through oversight I omitted special reference to the Act of 1661. Although, as stated in the answers to questions 657 and 658, criminal proceedings are never instituted under that Act except against the celebration of an irregular marriage, yet its provisions seem to have been intended to apply to those concerned in *any* irregular marriage, whether celebrated or uncelebrated. It is entitled an "Act against clandestine and "unlawfull marriages," and runs thus:—"Our Soverane Lord "and the Estates of this present Parliament, considering how "necessarie it is that no mariage be celebrate but according to "the lawdable order and constitution of this Kirk, and by such "persones as are by the authority of this Kirk warranted to "celebrate the same; and that, notwithstanding thereof, sindrie, "either out of disaffection to the religion presentlie professed "within this kingdom, or being desireous to eschew the censures "of this Kirk, or to satisfie their promeise of mariage formerlie "made to others, *or to decline the concurrence and consent of "their parents or others haveing interest*, or out of some other "vnlawfull pretext, doe procure themselffs to be maried either in "a clandestine way, contrary to the established order of the "Kirk, or by Jesuits, priests, deposed or suspended ministers, or "any others not authorised by this Kirk: Thairfor his Maiestie, "with advice of his saids Estates, statutes and ordaines that "*whatsuever persone or persones shall heirafter marie* or procure "themselffs to be maried *in a clandestine or inorderly way*, or by "Jesuits, priests, or any others not authorised by this Kirk, "That they shall be imprissoned for three moneths, and beside "their said imprissonment shall pay, each nobleman one thousand "pounds Scots, each baron and landed gentleman one thousand "merks, each gentleman and burges fyve hundreth punds, each "other persone one hundreth merks: And that they shall re-"maine in prisson ay and whill they make payment of these "respective penalties above mentioned, which are heirby or-"dained to be applyed to pious vses within the severall paroches "where the saids persones dwells: And that the celebrator "of such mariages be banished the Kingdome, never to return "thereto vnder the paine of death. Lykas, his Maiestie," &c.

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age of 21. Take the manufacturing districts: there young men and women, from the age of 15 or so, generally act for themselves, quite independently of their parents; they live in lodgings by themselves, though their parents are alive and living in the same neighbourhood; they act entirely for themselves, not only so far as providing a living goes, but indeed in almost every respect. I think it hard in such cases that the law should require that such young men or women, before entering into the marriage bond, should require the consent of their parents, who really know nothing about them or very little. If they have been able to shift for themselves for four or five years in all the ups and downs of life, they are probably much better able to judge whether the marriage into which they propose to enter is for their welfare than their parents could be. I am aware that the consent of parents is not an absolute requisite, that is to say, that if the consent of parents has not been obtained the marriage is not null by the law of England; but still it is required, and parties who pretend to have had the consent of parents, but have not had it, are liable to penalties. Then I think another thing is objectionable, and that is the system of licensing in England. Both banns in church and notice before the registrar, the latest idea on the subject, were intended to provide for the publicity of the intended union; but by the payment of a small sum of money, no doubt a large sum to a poor person, but still by payment of a comparatively small sum, that publicity may be altogether evaded. There may be notice given to the registrar; but, on payment of a sum of three pounds, he may issue a licence to the parties to marry the very day after the notice has been given, and before it has come to the knowledge of the public; so that the publicity, which it is the design of notice or banns to secure, is altogether defeated by such a provision.

671. (*Lord Chelmsford.*) You are probably aware that the publicity given by banns is quite illusory in large parishes and places where persons meet together and get a residence, or pretended residence, there for three weeks, and have their banns published there where they are entire strangers?——That is quite the view I take of it; and I venture to suggest that banns are an institution that ought to be altogether abolished, as no longer serving the purpose they were intended to serve.

672. In the populous parishes they sometimes take 20 minutes in the publication of banns, running through the names, and nobody hears anything of them?——Further, I think, the regulations about canonical hours and open churches, and so on, are unnecessary, if proper means have been taken to make the intended marriage public. Then, what does it matter where the parties are married, whether in a church, in a licensed building, in a registrar's office, or in a private house? If there be publicity—if all parties who take an interest in the matter are aware that the marriage is to take place, and have an opportunity of intimating their dissent if they desire to do so,—what can it matter where the marriage takes place, or at what hour it takes place?

673. What do you think the appointment of canonical hours arose from? Was it not in the Roman Catholic times, for the purpose of enabling the parties to attend mass, which is always in the forenoon?—— It was. My impression is—I will not say that I am right—but my impression is this, that it was in England that the idea of canonical hours first originated, certainly banns. The requirement of banns did not proceed from Rome in the first instance, but was required in England and France about the same time. The requirement of the proclamation of banns, I think, was accompanied by the injunction that the parties should be married during those canonical hours.

674. (*The Solicitor General for Scotland.*) I rather think the origin of canonical hours is what Lord Chelmsford has suggested, that the Roman Catholic Church required mass to be celebrated, and that mass takes place before 12; and that was alluded to very pointedly by Bishop Moriarty, who said it required a special dispensation from the bishop, that he did not even permit his priests to give it, to make the hour after 12, but that he did make it under special circumstances?——I see that my memory has not failed me with regard to that matter of the introduction of banns. It was about the year 1200 when they were first required in England. In Johnson's "Ecclesiastical Law" it is stated that in that year Archbishop Walter ordained, "Let no marriage be contracted without "banns thrice published in the church, nor between "persons unknown. Let none be joined in marriage "but publicly, in face of the church; otherwise let it "not be allowed except by the special authority of the "bishop." A similar ordinance was issued about the same time by Eudes de Suilly, Bishop of Paris; and so highly was the idea approved of by Pope Innocent III. that, in the Fourth Council of Lateran, in the year 1215, he made it the law of the whole Church. As a marriage could not be celebrated in the face of the Church except while the congregation was assembled, it may, I think, be inferred that the observance of canonical hours arose as a necessary consequence of this requirement of the publication of banns and celebration *in facie ecclesiæ*.

675. (*Lord Chelmsford.*) As I understand, you object to licences because there is no publicity, and you object to banns because they are illusory in the way of giving notice. What would you propose to substitute either for the licence or for the banns?——I would retain the notice to the registrar that is given at present, and which he is required to publish in his office for 21 days. That, I think, may be a means of attaining publicity, and is, I think, the only way in which publicity can be obtained under the present law.

676. What notice is given by the registrar which persons who are interested in preventing the marriage could know of?——I do not think the registrar gives sufficient notice; and, if I may be allowed to suggest it, what I think is desirable is that not only should he display in his office the names of parties who intend contracting marriage, and allow them to be so displayed there for 21 days, as I think is the law at present where not a licence but a mere certificate is to be issued by him; not only that, but he should be required to give private information, or official information in a private way, to the parents and guardians of the parties.

677. You do not mean that in the case of regular marriages the registrar should intervene at all?—— Not necessarily in the celebration of the marriage. I have a strong feeling that the proclamation of banns is no longer adapted to the present state of society, and that the only way in which notice can be given to the public is by an intimation made by the registrar or some other official, and displayed by him in a public place for a certain length of time, 14 or 21 days as may be thought desirable, so that anyone may have an opportunity of seeing it; displayed in such a public place that even passers by may see it. I do not object to it being displayed on the church door; a list of all the parties who have given notice of an intention to contract marriage.

678. I am afraid those notices on the church door convey very little information. Persons very seldom look at them?——Still they give more publicity than banns; and I do not well see how otherwise you can make a notice public. Certainly give official information, over and above this public notification on the church door, to the parents or guardians of the parties intending to contract marriage; but I do not see what more can be done in the way of publication, unless it were to publish the notice in a newspaper, and such a thing would not be read any more than a publication on the church door.

679. (*Dr. Twiss.*) Why is it so necessary to have the intention made known as distinguished from the fact of marriage?——That parents may be informed of such an intention on the part of their children when it has not otherwise come to their knowledge; and that they or others may have an opportunity of inti-

nating their dissent, of suggesting impediments or otherwise.

680. You said you were disposed to think that at present our law allowed too great an interference with the liberty of marriage, by allowing the father to interfere in the case of the minor?——I do not go to that extent. Indeed I am very much inclined to think that there is wisdom in the French law, which absolutely prohibits marriages under the ages of 18 and 15 instead of 14 and 12. I am also inclined to think that it is very desirable that up to the age of 21 the consent of parents should be sought for in the first instance; but that the parties should have an opportunity, in the case of the parents withholding their consent, of appealing to some tribunal which might judge whether the reasons for withholding that consent were reasonable or not.

681. That is the French system?——It is very much the French system, only that they allow parental interference up to an age which, I think, is extravagant.

682. (*Lord Justice Clerk.*) What kind of tribunal do you contemplate, ecclesiastical or civil?——A civil tribunal, as is the case in France. I believe the occurrence of such an appeal is very infrequent. The want of consent in many modern Continental systems does not invalidate the marriage. The consent is required; but the penalty of marrying when the consent is refused is this, that if the consent has not been withheld unreasonably, but, on the contrary, has been withheld reasonably, there the parents have the right of disinheriting the child, that is to say, that the child who marries in spite of the withheld consent of the parent, and contrary to his prohibition, may be deprived of his *legitim*.

683. (*Lord Chelmsford.*) Who are likely to judge best for the interests of the child but the parents?—— The parents undoubtedly are in ordinary cases the best judges. In some foreign legislations on this subject there are certain reasons for withholding the consent, which are always to be regarded as sufficient; for example, if a parent avers that the intending contracting parties have not the means to support themselves, that they are of defective health, or of unsound mind, and so on. But there may be cases, and such cases I think must often arise in the manufacturing districts, where it would be unreasonable in the parent to withhold his consent to the marriage of his child who has been shifting for himself, and been maintaining himself with credit, for a series of years.

684. (*The Solicitor General for Scotland.*) Do you think the people of Scotland would approve of requiring the parents' consent in any case?——I am not prepared to say they would. I am at this moment giving my own opinion. It is not altogether a novelty, as you see from those passages to which I have referred you in the proceedings of the General Assembly, in which they required that the parents and guardians should be informed of the intended marriage that they might have an opportunity of intimating their dissent.

685. (*Lord Justice Clerk.*) At the same time there is no trace on these records of such a dissent being given effect to, so as to prevent the marriage?——No doubt. I am stating only my own private impression; and I think it desirable that the parents should be called upon to consent; and that only in cases where the withholding of the consent is unreasonable should the marriage be allowed to proceed without it.

686. (*The Solicitor General for Scotland.*) You introduced this subject by specifying the consent of parents as one of the requisites of the law of England which you would object to?——So long as it is held to be an absolute requisite. I do not know that it would be agreeable to the people of Scotland to any extent. I am stating my own view on the matter solely.

687. (*Lord Chelmsford.*) Have there ever been, at least within modern times, any instances of marriages at the tender ages you have mentioned, 14 and 12?——There was a case occurred not very long ago in London, in one of the police courts, where the age of the husband was 14.

688. I mean in Scotland?——I am not able to say. I should doubt it very much. I see no reason why the figures should stand at 12 and 14.

689. If children were disposed to commit that folly there would be no possibility of preventing them?——None.

690. (*Dr. Twiss.*) What do you think is the great object of publicity? You object to the licence on the ground that it does not allow the parties interested to object and prevent it? In regard to the proclamation?——I think the proclamation does not answer the purposes for which it was introduced. It passes over unheard.

691. The three proclamations may take place on one day?——Yes. I am not speaking of Scotland alone, but of England, too. I think in populous districts, in large towns, it really does not secure publicity. Few of us but know instances of the publication of banns being made and parties being married without any of their friends having ever heard of it.

692. Is the object of publicity to prevent the marriage, or to make public the change of status?——To make public the intention of the parties, that parents and friends may know it, and that those who can state any impediment to it, either of the nature of consanguinity or prior marriage, may have an opportunity of doing so, as a security against the marriage being entered into while such impediment exists.

693. (*Lord Justice Clerk.*) Security against incest and bigamy?——Exactly.

694. (*Dr. Twiss.*) As a matter of fact, in either case, by our law, the marriage would be no marriage at all?——It would be no marriage at all; but the hard result has taken place for the woman who has been deluded. Now I would have the marriage prevented.

695. (*Lord Chelmsford.*) It would only be the case of bigamy in which it would be hard upon her, because in the case of incest she would have the knowledge as well as the man?——True.

696. (*The Solicitor General for Scotland.*) In point of fact, I suppose you are quite satisfied that our system of proclamation of banns has really served no other purpose than that of publicity? The registry of proclamations, until the recent Registration Act, was the only register of marriages, and practically it was not found necessary to prevent incest or bigamy, but it was found very necessary to give publicity to the fact of marriage. I do not mean to differ from you in the slightest degree that the original purpose of proclamation is to give notice of intention; but that has been the practical utility of it in Scotland for a hundred years at least?——Its principal utility probably; though it is impossible to say how many proposed marriages have been prevented by the disclosure to either of the parties of circumstances that would have invalidated them if they had been celebrated—facts communicated by individuals to whom the proclamation of banns had made known an intended marriage.

697. (*Lord Chelmsford.*) Would you propose to substitute for what we have agreed to call irregular marriages the marriage before the registrar?——I do not care whether it is marriage before the registrar or marriage before a clergyman. What I am very anxious to say is this: that the legal requirements and the preliminaries of marriage should be exceedingly simple and inexpensive; and I think a notice to the registrar, to be published by him for a certain length of time, at a charge to the parties not exceeding a shilling or two, ought to come in place of the proclamation of banns, which I think is too expensive, and a bar to regular marriage at the present moment. If that were done, I would certainly say that an irregular marriage, whether clandestine or irregular in the usual sense, ought no longer to be recognized as a legal marriage; but I think it would be hard to provide that irregular marriages should be no longer valid unless you gave greater and less extensive facilities to the poorer classes of the public for contracting regular marriages.

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I have particularly an objection to promise followed by *copulâ*—the recognition of that as a mode of proving interchange of consent. I think its working is on the whole very prejudicial.

698. (*Lord Justice Clerk.*) What are the evidences of its evil-working ?——I think promises are often made on the one side without there being an intention to keep them, and they are often extorted on the other side.

699. (*The Solicitor General for Scotland.*) As a condition of the *copula* ?——Yes.

700. (*Lord Justice Clerk.*) Are these marriages of frequent occurrence ?——It is really impossible to say. They certainly do not often come before the tribunals ; perhaps I should say rather that there are few cases of them reported in the books.

701. Is it not understood that a marriage made out in that way by promise and a subsequent *copula* requires to be declared ?——It is. That is said to be the law of Scotland.

702. How many cases may there be within the last half century ?——There are very few that I know of.

703. Can you specify the number ?——No ; I am sorry to say I cannot. If I had been aware that I was to have the honour of appearing before the Commissioners, I should before leaving Edinburgh have taken care to provide myself with some notes on the subject.

704. Do you think that the existence of this mode of making out a marriage might have beneficial consequences in the way of preventing seduction ?—— I cannot so view it. It is to some extent sentiment, perhaps ; but still it is a firm conviction with me.

705. (*Dr. Twiss.*) What do you conceive is the objection to the woman extorting the promise to marry as a condition of *copula* if thereby it becomes a marriage ?——I think it is in that form of marriage more than any other that fraud is possible.

706. (*Lord Justice Clerk.*) What do you mean exactly by fraud ?——That a woman may take advantage of an inexperienced youth; that there is an absence of that deliberate consent which is desirable.

707. In the cases which have occurred has it generally been the case that an artful woman has taken advantage of an inexperienced youth, or the reverse ?——I rather think your lordship is right that it is the reverse in the cases that are reported ; but still I cannot get quit of the feeling that it is prejudicial to recognize it.

708. Have you any knowledge of the comparative amount of seduction in England and Scotland ?—— None whatever. But my impression is that Scotland has heard too much said about its immorality. I do not think immorality is greater in Scotland than in England ; speaking from ordinary observation, I do not think there are in Scotland a proportionately greater number of persons living together without the bond of marriage than in England.

709. (*The Solicitor General for Scotland.*) You are not, I understand, referring particularly to immorality of the character of seduction ?——No.

710. (*Lord Justice Clerk.*) You are speaking now, perhaps, merely of the mere begetting of illegitimate children ?——Yes ; I am speaking of such immorality generally. As to seduction I can say nothing, for I have no means of judging.

711. I suppose you cannot give us information as to the comparative amount of concubinage in one country and the other ?——No ; I think that is another matter which would be difficult for one to judge of except by hearsay. But in glancing over the newspapers, and particularly the police reports and such like, one sees the phrase much more frequently in England than in Scotland, that so and so was charged with cruelty towards so and so "cohabiting with him "as his wife." That is a phrase which shocks one very often in reading the English prints, but does not shock one nearly so frequently in Scotland.

712. (*Dr. Twiss.*) It does not occur so often ?—— It does not occur so often.

713. (*Lord Justice Clerk.*) Do not you think that a good deal of information might be had upon that from such persons as parish ministers in both countries ? ——I think so. Parish ministers are the most likely persons. May I be allowed to make an observation which does not refer to concubinage exactly, but to another relationship, which is much worse, that of incest ? I had recently stated to me, not directly, but on the authority of a friend, who had it from a parish clergyman in England, that in his parish he knew of 16 couples living in incest.

714. (*Lord Chelmsford.*) Was that a large parish ? ——It was in one of the manufacturing towns—in Yorkshire, I think.

715. (*Dr. Twiss.*) What did he mean by that ?—— Fathers living with their daughters.

716. (*Lord Chelmsford.*) Was it the same description of incest in all the 16 cases ?——I cannot say whether it was the same.

717. (*Dr. Twiss.*) Chiefly consanguinity ?——Yes. That was what was particularly mentioned to me. There is another matter which probably the Commissioners take an interest in, and that is the question of legitimation by subsequent marriage.

(*Lord Chelmsford.*) I do not know that that is within the scope of our Commission ; I think not.

718. (*The Solicitor General for Scotland.*) Is it your opinion that the existing state of the law of Scotland, I mean which admits of the doctrine of marriage constituted or proved by promise *subsequenti copulâ*, in point of fact prevents immorality, prevents the seduction of young women by men ?——I do not think it does.

719. I mean that men are thereby deterred from that kind of immorality from the fear that they may find themselves married ?——I do not believe it ever enters into a man's consideration.

720. According to your opinion, as I gather it, declaring the two to be married is not a suitable punishment for the seduction ?——I do not think it is.

721. (*Lord Chelmsford.*) You see there may be a verbal promise which may lead to the *copula*, and that would not do, because it must be a written promise ? ——That is the doctrine.

722. (*The Solicitor General for Scotland.*) It is really founded upon a fiction ; because, although you very properly, as I understand the law, stated that as evidence of the consent, yet in point of fact the Court may be bound to declare the marriage according to the existing law, although quite satisfied that neither the one party nor the other have the least idea that they were married or gave any consent on the subject. It is a fiction whereby the consent is supposed to have been completely interchanged at the time, although there was nothing of the sort ?——It may be ; a presumption often degenerates into a fiction.

723. (*Lord Justice Clerk.*) Is it quite clear that it proceeds upon a fiction, or is it not rather an arbitrary rule of the law founded upon expediency ?——As stated in the canon law, where we have the matter first discussed, it is put upon the footing of a presumption which the law will not allow to be redargued. The words of the decretal are, "licet præsumptum matri-"monium videatur, contra tamen præsumptionem "hujusmodi non est probatio admittenda."

724. In the latter view it would not be evidence of consent, but would really be proof of two things which the law held to constitute marriage, a promise in writing and the *copula* following ?——It is put as a presumption that consent has been interchanged, that being the only real mode of contracting marriage.

725. In that view of it it would be a fiction, and in the other it would be a rule *positivi juris* that those two things together made a marriage ?——Yes.

726. I understood the result of your opinion to be that no marriage should be allowed to have any legal effect unless it be gone about regularly, that is to say, unless it is preceded by some notice and carried through in some prescribed way ?——I stated that to be my view conditionally ; the condition being that the formalities prescribed be so simple and inexpensive that the neglect or disregard of them may fairly be

ken as an indication or presumption that the parties d not really intend to contract marriage.

727. Will you suggest, if you are prepared to do it, hat sort of formalities those should be ?——My view that the only formalities that ought to be required absolutely necessary to the validity of the marriage ould be these: that means should have been taken make the intention of the parties public, say by opting to a certain extent the system now followed England, of notice to the registrar to be exhibited some public place, or made public by him in any her way that may be thought more conducive to the d in view, for a certain length of time, the charge r that notice and the intimation by him being very nall, not above 1*s.* or 2*s.*; that after the notice shall ve been published for a certain length of time, a cer- icate of the fact should be issued by the registrar, and at parties should then have it in their power to have e marriage celebrated either by a clergyman in the dinary form of a regularly celebrated marriage in otland at this time, or, if they please, I would ve them the option of having the marriage cele- ated by the registrar in his office. I do not care nether the celebration, supposing it to be by a clergy- an, takes place in a church or a private house, or what hour it takes place, so long as sufficient pub- ity has been given. All I would require over and ove is that, in addition to the celebrator, two wit- sses should be present.

728. (*Lord Chelmsford.*) You would propose that those formalities are not observed, the marriage ould be invalid?——That if those formalities are t observed the marriage should be invalid.

729. (*Lord Justice Clerk.*) Do I understand you to ean that the marriage should be invalid to all intents d purposes if it cannot be proved that those for- alities have taken place and have been observed? y question rather points to the legitimacy of children ter the death of their parents?——I think it would very desirable in such cases as that to refuse the wer of challenge after a certain length of time; that e status of children should not be called in question the parents have lived and died in the undivided pute of matrimony. Even in England at this day, believe, in a question of the legitimacy of children, is held that it is sufficient to establish a repute of atrimony between the parents for a long period of ars, even though it be impossible to prove the act marriage. I think that is the law of England.

730. You would restrict that exception to the case legitimacy? Would you not allow the parties emselves during their lifetime, who have cohabited gether for 20 years and been known to all persons a arried persons, to assert and maintain the *status* of arried persons?——I am very favourable to the re- ntion of that law of habit and repute, where there has en an apparent *matrimonii consortium* for a long riod of years. I am very clearly of opinion that me means should be devised whereby that reputed atus should not be disturbed; but there is a difficulty.

731. A difficulty in reconciling that with what you ve suggested?——Yes.

732. Does that not rather suggest a formidable ob- tion to your proposal, that it would altogether move from the law the great effect which has therto been ascribed to long conjugal cohabitation, ith universal acceptance by the world as married rsons?——I should be very much inclined to retain ; and, in any Act introducing such a change as I ve indicated, to provide specially that where there s been undivided repute of matrimony for a long riod of years the right of challenge should be ex- uded, so far as the act of marriage is concerned.

733. Would you propose to assign any particular nit?——No; I should let it stand on the common w.

734. The result of that seems to be that you would tain the present law of cohabitation?——So far as abit and repute goes it comes to that.

735. The parts of the law which you would abro- ate, and for which you would substitute a celebra- tion, are the interchange of consent merely *per verba de præsenti* without any cohabitation, and the case of promise with subsequent *copula*?——Yes. I think it would be very desirable that no challenge should be allowed where there had been long habit and repute.

736. (*Lord Chelmsford.*) When you give us your opinion that the non-observance of the prescribed formalities ought to invalidate the marriage, would you consider in such a case, if the proof of the marriage became necessary, that it would not be advisable to take for granted that those formalities had been observed until the contrary was proved, in that case to require the parties to prove it, which is very difficult? ——Yes.

737. So that you would assume that all the proper formalities had been observed until the contrary was proved?——It is a general rule of law that all things are presumed rightly done and the forms to have been gone through properly.

738. But if you are to make it a necessary pre liminary to the marriage, how can you prove the marriage without proving that these necessary preliminaries have been observed?——I meant to say this, it would be sufficient to invalidate the marriage to prove that those formalities had not been observed.

739. (*Dr. Twiss.*) How do you contemplate the marriage being proved in the case of this regular marriage?——By registration under the present system.

740. By the celebrant? Is he to register?——The system in Scotland at this moment is that the parties obtain from the registrar's office a schedule, which is handed to the celebrating clergyman, who fills it up, and the parties and witnesses sign it, and that is returned to the registrar within a certain number of days. That, I think, requires no alteration.

741. There are other registers kept in the churches at present, are there not?——Probably there are registers kept in the churches; but the registrar's schedule is returned to his office, and by him in due time sent on to the Registrar General.

742. (*The Solicitor General for Scotland.*) Would you in any way limit your alteration of the present law as to proving marriage by establishing an interchange of consent *de præsenti*?——I am afraid I do not quite follow you.

743. You propose to abolish the law as it at present stands to that effect?——Yes.

744. That marriage may be proved by saying that the parties interchange consent *de præsenti*?——Yes.

745. And to retain the existing law of cohabitation, and habit and repute. Now in that mode of establishing marriage by cohabitation, and habit and repute, the proof of what the parties said to each other and said of each other, which is always regarding the consent, is quite admissible and often very important? ——Yes.

746. You would not exclude that?——No, I would not; because that would be part of the proof of the habit and repute.

747. Supposing parties had been living together for a week as man and wife, the man speaking of the woman as his wife, and she speaking of him as her husband, introducing each other as "my husband" and "my wife," would you alter the law in that case? ——That would not be habit and repute. A week's habit and repute would be utterly insufficient.

748. The case I am putting would be a very sufficient proof of marriage after they had been living together for a week only, and there is a child the result of it; that would be very good evidence of marriage?——I think it would be necessary to exclude such evidence.

749. That is what I meant, that you would abolish the existing law as to proving marriage by interchange of consent, without any qualification or modification? ——I would. No doubt it might occasionally be productive of hardship; but that is always the case with human laws.

750. And though they have been living together not for a week or a month but for some months, it

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would be the same thing if there were not sufficient evidence of marriage by habit and repute ?——Yes.

751. (*Lord Chelmsford.*) I understood that you would propose to substitute for marriage by consent *per verba de præsenti*, that there should be in every case a celebrator ?——Yes.

752. (*Dr. Twiss.*) And witnesses ?——And two witnesses. I do not think their presence ought to be dispensed with.

753. (*The Solicitor General for Scotland.*) Are you merely giving us your own views upon that matter, or have you reason to believe that that would be satisfactory generally to the people of the country? ——I have had conversations with many men on the subject of the existing state of our marriage law, and whether it was capable of amendment or required amendment; and opinion is so much divided that I should not like to say that I have been expressing anything more than my own individual view.

745. You would not like to say that it would in your judgment be generally acceptable in the country? ——I would not; because I find opinion so very various on the subject.

755. Have you any opinion to the contrary, that it would not be generally acceptable ?——No, I have not.

756. Neither way ?——Neither way. I have no reason to believe that it would be unacceptable.

757. (*Lord Justice Clerk.*) Have you any idea that it would be more acceptable to one class of the community than to another ?——No, I have not. I should think it would be generally acceptable; it acceptable to one class, that it would be acceptable to another. The great object to be attained is to give facilities for regular marriages to those amongst whom irregular marriages are most common. Now, the irregular marriages are more frequent in the lower classes than in the higher classes; and that I to a certain extent attribute to the fact that a regular marriage is an expensive luxury with them, and they prefer the irregular and cheaper marriage to none at all.

Wednesday, 2nd May 1866.

PRESENT:

RIGHT HON. the LORD LYVEDEN.
The RIGHT HON. SPENCER H. WALPOLE, Q.C., M.P.
RIGHT HON. the LORD JUSTICE CLERK of SCOTLAND.
TRAVERS TWISS, Esq., Q.C., D.C.L.

LORD LYVEDEN IN THE CHAIR.

N. Macpherson, Esq., Advocate.

2 May 1866.

NORMAN MACPHERSON, Esq., Advocate, examined.

758. (*Lord Justice Clerk.*) I believe you are a Professor of Scotch Law in the University of Edinburgh ?——I am.

759. Recently appointed ?——Last year.

760. You have been a member of the Scotch bar for a number of years ?——Fifteen years.

761. Have you turned your attention a good deal to the state of the marriage law in Scotland ?——I have, particularly of late, with regard to its social bearings.

762. Are you prepared to state your views upon the questions into which this Commission have been directed to inquire ?——I have thought the subject over with a view to my examination, and, in considering the question of the expediency of assimilating the marriage laws of England and Scotland, various subjects of inquiry have presented themselves.

I. Seeing that the marriage laws affect not any class or section of the community in particular, but the whole mass of the population, the first inquiry that suggested itself to me was whether or not there was any dissatisfaction in Scotland with the present marriage law. I am not aware of any trace of general dissatisfaction throughout the country with the present state of the law.

II. The next subject of inquiry was whether or not there were any flagrant defects in our law as it now stands, and if so, what they were. I was struck with one important change in the law since 1849, when there was a previous inquiry of the same character as the present, viz., that we have now a very efficient uniform system of registration throughout the country, which seems to me a valuable improvement in the matter of preserving evidence. As to the general character of the law, I observe that while the law favours the contraction of marriage according to certain forms, still the marriage of any person who has openly desired to be married, and gone through a marriage service in the presence of a clergyman of any denomination, is absolutely safe and protected. There can be no uncertainty as to the validity of a marriage in Scotland for want of compliance with form. I am not aware that there is on record a single case of a marriage being declared null for defect in form. The only ground of setting aside a marriage between parties not within the prohibited degrees is where bigamy has been committed by one of the parties. No law can be an absolute protection against that crime. This security is no doubt in part due to the circumstance that we have really no statute law regarding marriage at all. The validity does not depend on the interpretation or observance of any statute. We have one or two statutes directed against irregular marriages; the first of them is directed curiously enough, against the facilities which Scotchmen used to find in England for contracting irregular marriages, and it imposes penalties on Scotchmen for crossing the border and getting married in England.

763. (*Lord Lyveden.*) What is the date of that ?——I think it is 1641. But others follow; one in 1661, another in 1672, (afterwards rescinded,) another in 1695, and another in 1698. They are nearly all directed against irregular marriages, against personating a clergyman, and against celebrating marriages without proclamation of banns. There is no such thing as a statutory nullity of marriage till we come to the Act 19th and 20th Victoria, c. 96. with reference to the Gretna Green marriages. That Act creates the first and only statutory nullity of marriage which occurs, so far as I know, in any Act whatever applying to Scotland.

I have already mentioned that we have now a complete system of registration. According to the published returns, upwards of 998, nearly 999 per 1,000 of all marriages in Scotland are regular marriages by a clergyman, and after proclamation of banns. I have not had access to a complete set of the annual reports of the registrar of births, deaths, and marriages, but I understand something like a steady annual number of irregular marriages has now been reached, indicating that there is every year a certain amount of marriages of an irregular kind which parties desire to register. In one of the earlier years I observe that the number was a good deal higher than it is now, and I infer that after the system of registration came into effect, a considerable number who had contracted irregular marriages availed themselves of it, and that now we have come to something like the normal condition. I do not profess to have any personal acquaintance with the register.

764. You have no doubt of the diminution of irregular marriages ?——I believe I have seen in some of the more recent returns that in 21,000 marriages about 24 is the present average of irregular marriages, and in looking over the statistics in one of

the earlier years I observed 36 was the number. That was about 10 years ago, soon after the institution of the system of registration, but I have not seen a complete set of the returns.

765. (*Dr. Twiss.*) Do you consider that the number of irregular marriages have diminished in proportion, or that the number of irregular marriages have been regularized, if I may so say?——I don't look upon the new system of registration as having in any way affected the number of irregular marriages. So far as I know, the only special diminution in the annual number of irregular marriages arises from the Gretna Green Act. On its passing, there was at once a sudden diminution of hundreds a year, because the great bulk of the Scotch irregular border marriages took place between English people feeling the restraints of English law, and crossing the border in order to take advantage of the greater freedom there. If I am right in supposing that there is now a pretty equal number of registrations of irregular marriages annually, I should assume that that represented in a rough average way the number of irregular marriages.

766. (*Lord Justice Clerk.*) The diminution of irregular marriages consequent on Lord Brougham's Act must of course be entirely of irregular marriages among English parties?——Entirely.

767. Because it is to that that Lord Brougham's Act is confined?——It is confined to marriages where one of the parties has not been 21 days in Scotland. Its object was to check English runaway marriages in Scotland, not to touch Scotch marriages, except incidentially in the matter of registration of irregular marriages, as to which it enlarges the powers conferred by the Registration Act.

With regard to the subject of private marriages, I observe that I do not remember to have ever read in the books of a single case where a marriage was declared which ought not certainly to have been declared—where the conduct of the parties had not been such that there could be no doubt they ought to have been married. I therefore see no risk of anyone under our law of private marriage being declared married whose conduct has not been such as fairly to lead the other party to believe that they were honestly intending a marriage.

768. (*Dr. Twiss.*) What do you mean by private marriages?——I mean marriages by promise *subsequente copulâ*, or by declaration exchanged in writing, or before a couple of witnesses, with the intention of the marriage not being made notorious.

769. (*Lord Justice Clerk.*) You distinguish there between marriages which are in their nature private and those which are public, not meaning the same thing as the distinguishing between the regular and the irregular marriages?——I do, although all private marriages are irregular.

770. Marriages which depend on cohabitation and habit and repute are not in your opinion private marriages?——They are not private marriages.

771. Probably they are the most public of all?——They depend entirely upon publicity and on the universality of the repute.

772. Can you give us any idea of what may be the proportion of irregular marriages that are what you have called private; that is to say, where there is simply an interchange of consent, without any cohabitation following upon it, or a promise *subsequente copulâ*?——That is a question which I have great difficulty in answering. If the three classes of marriage be put together, as disclosed in reported decisions, the class in which it is most difficult to establish marriage, is where the evidence depends upon cohabitation and habit and repute. There are fewer cases of that character in which marriage has been established than of either of the other classes. I think that the most frequent case is of exchange of writings, exchange of consent *per verba de præsenti*. I think that is the most frequent class that comes before the courts.

773. Is there any reason to suppose that there are many such cases of constitution of marriage by mere interchange of consent, that do not either come before the court or become open and public marriages in some other way?——I think there are very few indeed, because it is the interest of the woman to take an early opportunity of making the marriage public, and I think that very generally after such a marriage the parties have banns proclaimed and are married regularly *in facie ecclesiæ*. I think that is the practice. It is the most convenient way of having the evidence preserved, and it is necessary to give respectability to such marriages.

774. Can you give us any notion how many of these marriages have been questioned—marriages constituted by the mere interchange of present consent within the last half century, or any other period?—— I have had the Rolls of Court for the last ten years examined, and there were upon an average nearly four cases a year either of declarators of marriage or of declarator of marriage combined with conclusion for damages,—which implies also that the case was laid for breach of promise of marriage,—or of declarators of legitimacy, so that about four times a year some such question is brought into the court. I do not know what proportion, but probably a large proportion, are settled without coming to trial—at least they do not involve any point of novelty requiring to be reported. A little more than one case a year has been reported as involving some question of marriage, either directly or indirectly, during the present century. I think about 70 cases have been reported since the beginning of the century.

775. How many cases do you find of marriage established by promise *subsequente copulâ*?——I have not here the means of answering that question. I made some jottings on the subject, but I am sorry to say I have not got them here. I do not know that they were sufficiently accurate to have enabled me to give an answer to the question, but it would be very easy to ascertain that.

776. (*Lord Lyveden.*) How could it be ascertained? What documents are there to prove it?——There is a publication which we call the "Minute Book," in which the decrees of the court are published in an abbreviated form, which would show the way in which such actions have been disposed of. This book might not show the ground on which the decision proceeded, but it would afford the means of tracing the cases and ascertaining the facts. From my own examination of the cases I can state that there have been only six cases, including the Yelverton case, not yet finally disposed of, in the last 40 years founded upon promise (or what was contended to be equivalent) *subsequente copulâ*.

777. (*Lord Justice Clerk.*) Which came to trial and were reported?——Which came to trial and were reported. I do not know that there has been even one in which the pursuer was successful. I think there were only two in which the question arose purely. Some new views as to the mode of proving promise had been thrown out as *obiter dicta* in the House of Lords, and the other cases were raised to try those points. The six cases I have referred to have occurred since that of Honeyman *v.* Campbell, which was decided about 1830.

III. Not seeing any great and striking evil in our own law, it next occurred to me to consider whether we in Scotland suffered any inconveniences from the differences of law between England and Scotland. Except that I have discovered that to an extent far beyond what I was aware of before, there are grounds of uncertainty as to the validity of marriages taking place in England, I do not see any inconvenience that has applied specially to Scotland. There is however, one, namely, that which arises from the rejection by England of the law of legitimation by subsequent marriage. That is a great inconvenience which we suffer from the English law, but is one which only arises now and then, at intervals of years. When it does arise it occurs in a very striking form, dividing families where in Scotland they are united. Sometimes a younger son takes

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the heritable estate in England, whilst the elder son takes it in Scotland, if there be any heritage there; and even the eldest son can come into Chancery and be received there as legitimate in the distribution of the moveable estate of his father, but he cannot succeed to his heritage in England unless he was born in wedlock. The law of Scotland, in recognizing legitimation *per subsequens matrimonium*, coincides, I believe, with that of France, Holland, and Germany; and even in America they have repudiated by degrees the English law, and a great many of the states (I think in Kent's Commentaries it is said 15) have adopted the law of legitimation by subsequent marriage. The reason given by the Barons in the reign of Henry III. for maintaining the present English law, which does not apply to children begotten, but only to those born before wedlock, *nolumus leges Angliæ mutari*, was a very powerful reason, but one which, however influential it may still be with the British Legislature, cannot very easily be dealt with in argument.

IV. The next point that occurred to me for consideration was, whether or not the people of England suffered any inconvenience from the existence of the present law in Scotland. It seems to me that since the Gretna Green Act they can suffer none, there being now no facility for people avoiding the English law by crossing the border and contracting marriage in the way which was so common prior to that Act. The three classes of Scotch marriages which are usually objected to are those popularly said to be contracted (1) by promise *subsequente copulâ;* (2) by interchange of consent *per verba de præsenti;* and (3) cohabitation and habit and repute. If we in Scotland could get rid of these classes of marriages without injury to ourselves and without sacrificing the principle of our marriage law, I should think it exceedingly desirable, and it would greatly facilitate the assimilation of the marriage laws of England and Scotland; but I am afraid that the social condition of Scotland is such that we cannot get rid of them without very great danger indeed, and that we cannot give them up without abandoning our leading doctrine that marriage depends on consent.

(1.) As to the law of promise *subsequente copulâ*, I think it of the utmost importance to the community in Scotland, particularly to the working classes. In considering the effect of the law of marriage we must look to the law in its application to the masses rather than to any special classes of the community. Now, I believe, not merely from current rumour, but from information which I have from clergymen of various denominations, that in the majority of cases among the working classes in the more populous rural districts, when parties appear before the clergyman to be married, the woman either is already a mother or is in the family way. There can be no doubt that in those circumstances it is right and honourable in the father of the child born or *in utero* to marry the mother. The law points in the same direction, and tells him that if he has promised to marry the girl it is his obligation in law as well as honour to do so. The law thus helps him to fulfil his moral obligation.

778. (*Dr. Twiss.*) By marrying her you mean to celebrate the marriage?——Yes; I think it very rare in any class of life for the parties to allow the marriage to rest on promise *subsequente copulâ* without having it followed by celebration *in facie ecclesiæ*. And I do not wish to be understood as saying that there has been in all these cases a formal promise of marriage so given as when followed by *copula* to amount to complete evidence of marriage; but the rule of law which infers matrimonial consent from the woman yielding her person on the faith of a formal promise coincides with the moral obligation to marry where intercourse has followed on a general matrimonial understanding, and both coincide with the interest of the state to promote marriage. It will be easy to alter the law of marriage so as greatly to diminish the chances of the woman, who has yielded her person, obtaining the remedy now afforded, but no change in the marriage law will alter the conditions on which the sexes have intercourse in the rank of life of which I am now speaking.

779. (*Lord Justice Clerk.*) You think a general understanding by the people that a promise followed by *copula* makes marriage induces men generally, where they are substantially in that relation to a woman, to celebrate the marriage?——I think it does.

780. (*Lord Lyveden.*) Does that in your opinion tend to increase immorality or to check it?——I cannot think that it checks antenuptial connexion, but I think that the intercourse of the sexes is truly quite beyond the law. The footing on which they work together in the fields, the terms on which they associate after work the bothie system, and twenty other considerations, come into play affecting the relations of the sexes. They are under the influence of passion rather than fine calculations as to the state of the law.

781. Do you not think the knowledge that a marriage may take place hereafter rather tends to increase the influence of that passion, or at least not to check it, than otherwise?——The knowledge that a marriage may take place cannot check the influence of passion, but the knowledge that he had promised to marry a woman, and that indulgence of passion would complete the marriage relation, would probably check it in the case of any man who had seduction in view, and not an honest purpose of marriage. But I have been speaking hitherto of the working classes. I think such calculations more likely to have a prejudicial influence in a higher class, if not corrected by considerations of probable loss of social position.

782. Do you think that one effect of that law is to render concubinage very rare in Scotland?——I believe it to be the fact that concubinage is exceedingly rare.

783. Do you know anything as to the state of it, comparatively with England?——I have spoken to people who are well informed as to parts of Scotland with which I am not personally acquainted, and I believe my information to be correct as to Scotland. As to the state of matters in England I have no personal knowledge, but I have heard that concubinage is common in England among the working classes. The proceedings in the police courts in England seem to disclose many such cases.

784. (*Lord Justice Clerk.*) But your knowledge of the amount of concubinage in England is merely from popular rumour?——It is derived purely from popular rumour. I have no information upon it.

785. (*Dr. Twiss.*) In other words, you are of opinion that the *copula* rarely takes place without a previous promise of marriage?——I do not say that. But I say this part of the law, and all other parts of what I may call our law of irregular marriage, including our law of legitimation *per subsequens matrimonium*, help people to get into the right course who have gone wrong. The whole law must be taken together; the law of promise *subsequente copulâ* and legitimation *per subsequens matrimonium* being in my opinion the most influential portion of the law—and the general operation is, where the woman has been injured, and where the man and woman have gone wrong, to help them right, and to repair the injury so far as may be. It will be easy to take away all those aids which bring them right, but impossible to change the habits of the people by any law relating to marriage.

786. By bringing them right you mean solemnizing their marriage *in facie ecclesiæ*?——Yes, in those cases where promise has preceded *copula*, and making them live and cohabit openly as man and wife; and also making others marry whose relation was short of one which the courts of law would declare to be that of man and wife.

787. (*Lord Justice Clerk.*) Do you think that the operation of the law is to produce a regular marriage in many cases where under a different system there would be concubinage?——There would be either concubinage or entire desertion of the woman.

788. (*Dr. Twiss.*) Is it rare that parties are cohabiting where there is merely a promise *de futuro* with the

copulâ?——I think it is rare that they are cohabiting, living together in the same house.

789. It is rare that they live together under those circumstances?——Very, I believe.

790. Wherever they come together under those circumstances they prefer to go and celebrate the marriage in public?——That is my impression.

791. (*Lord Justice Clerk.*) Do you find that in cases of promise and subsequent *copula* which have come to trial, the claim has been brought very recently after the fact?——Generally very recently after the fact, and I think in every case upon the first suspicion of desertion by the husband.

792. (*Lord Lyveden.*) There is a great deal of illegitimacy in Scotland, is there not?——A great deal, and a good deal of that is repaired by our law of legitimation *per subsequens matrimonium*. The power of legitimating forms an additional motive to marriage where there has been illicit intercourse.

793. (*Dr. Twiss.*) Have you any means of informing us what proportion of illegitimate children are legitimatized?——I have no means, and I am not aware that there are any published returns to show that; nor am I aware that the registers are kept in such a shape as to do so.

794. If there had been a promise *de futuro, subsequente copulâ*, and no public celebration, would the child be considered as illegitimate?——Not always, as the parents might be notoriously husband and wife; but as a rule it would, unless the marriage had been registered in some shape. Promise *subsequente copulâ* to be attended with the civil consequences of marriage is generally thought to require to be established by a decree of declarator of marriage; but where there is no intention of disputing the fact of marriage, it is easily supplemented by marriage *in facie ecclesiæ*, by declarations before witnesses, or by cohabitation, &c. Sometimes both parents acknowledge the child from the first, and propose to register it as legitimate, even where there has been no celebration. They are asked the date of the marriage, and I believe they sometimes cannot give it.

795. Do you think there are many persons who are living together in that state where there has only been a promise *de futuro, subsequente copulâ*, holding themselves out to the public as single persons?——I do not think there are; I think the matter is soon brought to a point. The woman insists on the solemnization of the marriage, and if the man refuses brings an action. We have a system by which there are agents for the poor scattered throughout the whole of Scotland, and I think almost certainly, if the father do not acknowlege a marriage when the facts amount in law to evidence of marriage, the mother would go to one of those agents and tell her story, and he would certainly say, "You can have an action raised." Counsel are provided who have to conduct these among other actions for the poor without any cost, so that there is every facility for having such marriages declared, if either party should decline to take advantage of the greater facilities of being married *in facie ecclesiæ*. There is no county in Scotland in which there are not agents whose duty it is to attend to poor persons.

796. (*Lord Justice Clerk.*) Law agents?——Yes, solicitors, members of some recognized society of solicitors, whose duty it is to look after the interests of such persons, and report to Edinburgh, where there are counsel as well as agents who are bound to look into such matters.

797. (*Dr. Twiss.*) What do you mean by the "duty" of such persons?——Every society of solicitors or procurators appoint in rotation members of the society to look after the interests of the poor, and if a case be neglected the Court of Session will, on application, direct immediate inquiry into the circumstances. I have known three or four cases of inquiry where a poor person complained that a case had been neglected by the agent appointed to take charge of it.

798. (*Lord Justice Clerk.*) I think the original rule about that is, that every court in Scotland assigns to poor persons counsel and agents, or agents, as the case may be, to conduct their suits, upon being satisfied that a person is in such a condition of poverty as not to be able to litigate without such assistance?——Their suits cannot be brought into the Court of Session without the sanction of the Court, and without special reports, from a sort of court of counsel and agents of some standing, to the effect that there is reasonable ground for litigation.

799. But then when there are recognized corporations of solicitors and the like, the court leaves it to them to choose those of their own body that they think best to perform the duty?——Yes; it is generally assigned to the junior members of the societies of law agents; at the bar, generally to advocates of three or four years' standing.

I am of opinion, then, that the operation upon the working classes in Scotland of this branch of our marriage law, I mean the law of promise *subsequente copulâ*, is very material and beneficial. It manifestly can hardly touch the working classes in England. It cannot do any damage to the masses in England or create any inconvenience to them. It can only touch the higher classes in England, because they alone come in any number to Scotland. I think that the effect of the law upon the higher classes is of a somewhat different kind. The formal restraints upon the intercourse of the sexes prevent the circumstances arising among the higher classes which make the law so useful among the lower. Among the former the danger to be provided against is less the indulgence of passion than deliberate seduction. For the reason already given I think the law of promise *subsequente copulâ* must act as a check against that. I infer the same thing from the rarity of actions of damages for seduction in Scotland. During the last 10 years there has not been above one in two years, according to the result of the search I have caused to be made, there having been set down for trial by jury in all only eight cases of actions of damages for seduction and for breach of promise of marriage taken together. Such actions seem frequent in England, and so is the disclosure of facts which in Scotland would give rise to declarators of marriage. Actions for breach of promise of marriage, too, in England seem to disclose such cases. I hold the law of promise *subsequente copulâ* to check seduction as regards the upper classes, and to act in the way of promoting marriage in regard to the lower classes, and that on both grounds it should be retained.

(2.) As to marriage by exchange of consent *per verba de præsenti*, I must say that I consider it by far the least valuable and the least important of our irre ular marriages, or rather modes of proving marriage; and I think so because I see by far the greatest number of litigations have arisen out of marriages of this kind. It is the most dangerous of all kinds of exchange of consent because it alone affords no time for reflection—everything is perilled on the words used with matrimonial intent. There is no *locus pœnitentiæ*, even though no *copula* have followed. I think the reasons of policy for supporting such marriages weaker than those which apply to the case of a woman yielding her person for the first time, on the faith of a promise of marriage. Moreover, when I look at the kind of cases that are reported, I see that the *verba de præsenti* are very often introduced after a course of illicit intercourse. I by no means wish to discourage the conversion of irregular relations into marriage, but I wish it done deliberately, and I would give an opportunity of pausing after the exchange of consent *per verba de præsenti*. My feeling is that, unless when cohabitation or *copula* have followed, this kind of marriage might be done away with without serious injury.

800. You are speaking now of the simple interchange of consent *per verba de præsenti* without anything following?——Without anything following. I think that the law might go the length of presuming that there had not been full matrimonial consent if that part of matrimonial life were omitted. There

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are in our books one or two cases on this branch of our law, such as the case of *Leslie*, a very remarkable case, and the case of Lockyer, which, particularly the latter, show how such words and writings come to be exchanged in circumstances where the parties would not think of cohabiting without marriage *in facie ecclesiæ*. In the former there was a long correspondence, both parties undoubtedly contemplating marriage and nothing else. In the latter there was an exchange of writings without the parties meaning marriage, at least without the lady intending thereby to become the wife of Lockyer. Accordingly the court declared that there was marriage in the one case and that there was not in the other, but in neither of these cases had there been any cohabitation or any *copula;* and I think that the whole of that class of cases might be swept away, and a good deal of controversy got rid of, if *verba de præsenti* were not sustained, except where followed by *copula* or cohabitation. *Lockyer's* case was a case of this kind; the man who sought to have a marriage declared with the lady represented, according to her story, which the court believed, that he had expectations from his father, who was opposed to the marriage, and that the only way to induce his father to come forward and make settlements to enable them to live as married persons was to persuade him that they were actually married already; and they exchanged perfectly unequivocal writings, accepting each other as husband and wife; but these were put into the man's hands for the purpose of moving his father, and there never had been any cohabitation or *copula;* and looking at the whole circumstances, the court inferred that there never had been that full and complete matrimonial intention which is required to give such words binding effect.

801. The writings were exchanged *alio intuitu?*——Yes.

(3.) I now come to evidence of cohabitation and reputation as man and wife as proof of marriage. I see no way of getting rid of this. And if I did, I am not sure that it would tend to assimilate the law of the two countries, for I have great difficulty in knowing whether the law of Scotland is now different from that of England, or how far it differs from that of other countries upon that subject. In Best's Principles of the Law of Evidence, p. 417, I find it laid down that acknowledgment, cohabitation, and reputation are presumptive evidence of marriage. Whether that be so where the marriage is the leading matter in conflict I do not know. Mr. Best excepts only prosecutions for bigamy and actions for criminal conversation. I have seen and heard of cases in chancery in which marriage was proved by cohabitation and reputation, and where the facts of marriage and legitimacy have been dealt with precisely as they might in a Scotch court upon evidence of general repute. I have heard even of marriage being proved in England in this way where there had been something creating a nullity which the parties were aware of, and which the register if produced might have disclosed; and if such evidence is admissible at all it would probably be impossible to prevent its being so used to prove, if I may so say, the truth of the fact of the parties having been man and wife against the register. If the court had been aware of the existence of the register and of the error or defect in it, it possibly might not have allowed the presumption arising from cohabitation and reputation. We, however, in Scotland, should be very much shocked by the idea of such a thing as any defect in a register being the means of upsetting a marriage between parties who had intended to be married, and had gone through a marriage ceremony, and lived together perhaps 20 years, acknowledging each other and acknowledged in society as husband and wife. We should punish the parties for fraud if they got married under a false name, or through any device which would vitiate the register; but we should hold the marriage to be quite good and substantially unchallengable. I do not think that anything would induce the people of Scotland willingly to have this part of our marriage law done away with. It seems to be the law in a great portion of America, and even under the Code Napoleon, as I understand, although not admitted to support a marriage between the parties it is admitted to support the legitimacy of issue. At least that is the way I read Section 197 of the Code Napoleon. The same rule is adopted in the new Italian code. I can hardly conceive of any system of law which would reject such evidence. I can illustrate the way in which the law would operate with us in Scotland, by taking a very unfavourable case indeed, and one which actually occurred. A couple were married on a certificate of proclamation of banns between one of them and a third party; the clergyman married them and the woman signed falsely, not her own name but that of the third party, in order to make the document correspond with the certificate of proclamation of banns. No person ever thought of doubting the validity of the marriage; but what had occurred was discovered some time afterwards, and both the husband and wife were imprisoned for fraud and imposition; but they intended to be married, and the marriage was perfectly good, notwithstanding this error which they had procured in the register.

802. (*Dr. Twiss.*) What kind of error do you allude to?——I was giving an illustration. A. had the banns of marriage proclaimed between himself and B. He quarrelled with B. and resolved to marry C., and A. and C. went to the clergyman with the certificate of proclamation of banns between A. and B. The clergyman performed the ceremony, and C. signed B.'s name. I am putting the most unfavourable case I can, and purposely, and I have done so for the further reason that it has actually occurred. Although the parties were both cognizant of this fraud the marriage was held to be perfectly good, but both the parties, on the discovery being made, were imprisoned for fraud and imposition.

803. (*Lord Justice Clerk.*) The marriage, I presume, had been followed by cohabitation for a long time?——For some time.

804. (*Dr. Twiss.*) They were not allowed to take advantage of the fraud?——It strikes us the other way. We should not see any trace of one gaining by fraud from a judgment holding parties to be married who both intended to be married; but we should think that either party challenging a marriage because of such a fraud, and doing so successfully, was getting the benefit of his own fraud. That is one of the things that strikes us as objectionable in the English law, that a man should commit such a fraud and be entitled to shake himself free of the marriage entirely through his own fraud.

805. That, you are aware, is the principle of our law—both must be parties to the fraud?——I am aware of that, but both or one may intend matrimony, as I understand; at least it is so stated in the Reports. I do not profess to know. There is the case of Midgley *v.* Wood, where it was stated that the woman believed that a fraud of which she was cognizant would not create any nullity in the marriage, and yet the marriage was declared null.

806. (*Lord Lyveden.*) Was it the ground of the decision that they both intended matrimony, although they had committed the fraud for other circumstances?——In Scotland?

807. Yes.——I did not mean to create the impression that the marriage had, in the case I referred to, been actually challenged and sustained. I do not suppose anyone would have thought of questioning the marriage for one moment. But if they had, and if the witnesses present had been all dead, beyond doubt cohabitation and reputation would have supported it.

808. Notwithstanding the fraud?——Notwithstanding the fraud. The fraud was one on the register and on the clergyman; there was no fraud as between the parties entering into the contract of marriage.

809. (*Dr. Twiss.*) In England there is a case of Tongue *v.* Tongue, a well-known case, where both

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rties, seeking to keep the father in the dark, knowgly and wilfully had the banns put up in a way that as not in accordance with the statute, and the marge was set aside on the application of the parties? —The English case I referred to was the case of idgley *v.* Wood, 1861, 30 L. J. Mat. Ca. p. 57. The an had himself proclaimed as "John Wood" instead "Bower Wood." The woman knew it. But the port bears that the judge stated that Wood "induced her to go through the form of marriage by telling her that the marriage would be good, and she, supposing that she would become his wife, consented to the use of the wrong name." Thus, although she was assured d believed that what she agreed to would create no llity, the marriage was set aside. I do not profess be familiar with English cases, but I do not desire y assimilation which would introduce the law of that se, as I read it, into Scotland.

The result of my consideration of this branch of e subject is that, except the modification which I ve mentioned of the doctrine of *verba de præsenti* nstituting marriage by itself, I do not see any dearture from our Scotch law of irregular marriage hich would be an improvement, or which could be troduced with safety, or indeed without great danger; d that I see no practical inconvenience which Engsh people experience from the Scotch law of which ey are entitled to complain.

V. The next inquiry to which I addressed myself as, whether I saw any features in the law of Engnd the adoption of which would improve our Scotch stem; and the first thing that struck me was that, far as I could find out (exclusive of Acts relating foreign and colonial marriage), there were upwards 30 Acts of Parliament at present in force constitutg the marriage law of England. A system which quired so much statutory enactment could never be troduced into Scotland and become generally known d understood by the masses, and it is of vital conseuence that a marriage law should be simple and easily derstood. A great many of these Acts are of course erely corrective statutes, and the leading statutes are ot very numerous. But the fact of so many correcve statutes being required seems to show that there ust be serious defects in the principles of the leading actments.

(1.) As I understand it, the leading object of the nglish statutes is to secure publication of intended arriages by proclamation of banns on three successive undays. That Scotland aims at also, but has not een able to obtain, and a great many proclamations f banns are made all three on one Sunday. I do not nd that England is able to carry out this system of roclamation of banns on three successive Sundays nd various statutory modes of dispensing with it ave been introduced. France has a system of publiations, not so long, but neither can it be carried out n its terms. The new Italian code provides for disensing with both the publications ordinarily required y it. Wherever the authority of the Church of Rome nd its laws were maintained, the church has some ower of dispensing with proclamation on three sucessive Sundays. In Scotland at the Reformation, when e retained expressly the proclamation of banns, we lso provided that the presbytery should have the eans of dispensing with it. Another feature of this art of the English marriage law is that all these disensations are more or less connected with money payents, and therefore they apply to the richer classes of he community and not to the poorer. Now, there is omparatively little risk, I should say, of objectionable nd clandestine marriages among the poor. It is xactly, as it seems to me, among the rich, that it is imortant that there should be special publication, and here it cannot be carried out, or at least, as far as I now, it never has been carried out. Therefore I do not hink that it would be wise to insist or to attempt to nsist upon publication on three successive Sundays.

(2.) I see that a good deal of stress is laid upon the lace of marriage; and the number of Acts which have een passed to legalize marriages which have taken place quite innocently in places which were not authorized seems to me in itself a demonstration of the danger of limiting the place of marriage.

(3.) The hour of marriage is also a matter as to which I cannot appreciate the motive for attempting to enforce regulations. It seems to be founded on a notion that the country is trying to conceal its marriages instead of publishing them. We have marriages at all hours of the day in Scotland and in all places. It is a very rare thing to have them within the body of the church. It is as rare to have them without the presence of a clergyman.

810. (*Dr. Twiss.*) It is more usual to have it in a private house?——Yes, but celebrated by a clergyman after proclamation of banns.

811. (*Mr. Walpole.*) Does that observation apply to all classes in Scotland, rich and poor equally?——The manse—*i. e.*, the clergyman's house—is generally the place of celebration amongst the poor, the house of the bride's father among the rich.

812. (*Lord Justice Clerk.*). There is an exception, however, in the case of those of the Episcopal community?——Yes.

813. They generally follow the English practice? ——Yes, and they also follow the English practice as to hours. There may be exceptions, but their practice is to adopt the English rule and have their marriage in the forenoon. But I have seen a marriage celebrated in a private house by a bishop of the Scottish Episcopal Church.

814. (*Dr. Twiss.*) Is there no regulation as to the place where parties must marry? Can any parties come before any clergyman and have their marriage solemnized after the banns have been proclaimed three times?——The clergyman, if he did not know the parties, would probably say, "Who are you? Who "is your clergyman? you had better go to him;" and would very likely refuse to marry them.

815. There is no legal necessity for marrying at a particular church?——There is no necessity for it, but the clergyman must have a certificate of the publication of banns, or he is punishable.

816. (*Lord Lyveden.*) Banns from the parish where they come?——The banns are proclaimed in the parishes where each of them usually reside.

817. (*Mr. Walpole.*) Is that certificate given for any time, or must it be given within a certain time of the publication of banns?——I am not able to answer that question. I am not aware of any limitation, but I do not think that any clergyman would marry upon an old proclamation without inquiry.

818. The law does not require any particular time? ——Not so far as I am aware; I have never looked into the statutes on the subject, but I am quite aware that clergymen do often refuse to marry those whom they do not consider to belong properly to their own congregation, and about whom they know nothing.

819. Have you any statute in Scotland regulating the procedure of marriage at all?——We have no statute regulating it.

820. Because you mentioned the statute just now? ——We have no statutes expressly regulating marriage procedure, but we have those I referred to in the early part of my evidence, enacting penalties against those who married or got married without banns, and we have statutes approving the rules of the church, at least by implication; old rules of the church which adopted the form of the triple proclamation of banns, at a council at Perth in 1242.

821. How do you verify or ascertain the exact rules of the church? What is the authority which you would hold to be binding with regard to those rules? ——With regard to this particular matter, I think the First Book of Discipline adopted as the ordinary rule to be observed, that banns should be proclaimed on three Sundays, unless where the parties were known to the clergyman, and the Directory for Public Worship also enjoined proclamation on three several Sundays. There has been no change for centuries in the rule of the church, although it has been so modified

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in practice that the triple proclamation may take place on one Sunday.

822. It rests upon usage in fact ?——It rests upon usage interpreting the rules of the church.

823. (*Dr. Twiss.*) That can be ascertained ?—Quite easily.

824. (*Lord Lyveden.*) Have you any improvements to suggest in the present state of registration in Scotland, or do you think it is as perfect as it can be made ?——I think it is very good so far as it goes. In the Gretna Green Act there is a general provision for registration of irregular marriages which is limited to three months from the time of celebration. The words of the clause empowering registration are wider than the words of prohibition of marriage. There are only certain classes of irregular marriages prohibited by that Act ; the words of registration do not refer to *such* irregular marriages, but *an* irregular marriage ; but the power of registering them is limited to three months. Of course after that the parties could either go to church and be married regularly, or bring a declarator and have their *status* judicially determined, or where the statutes against irregular marriages apply they can take means to be convicted. In any of those cases they could get the marriage registered, but only in these ways : where both parties are willing to have an irregular marriage registered, I think the power of getting this done through joint application by the parties to the sheriff as provided by the Gretna Green Act, might be extended beyond the three months under a small penalty.

825. (*Lord Justice Clerk.*) I think from what you said at the outset you attach importance to the principle of the marriage law of Scotland mainly because it gives such great security to regular marriages ? ——Yes.

826. And prevents the possibility of any regular marriage being challenged upon any ground of defective form ?——I do consider a marriage *in facie ecclesiæ* quite unchallengeable on any ground whatever.

827. There being no forms essential to the constitution of the marriage tie, of course any defect in the formalities which usually attend a regular marriage would have no fatal effect ?——No fatal effect at all. If there has been such a departure from forms as to reduce the marriage to an irregular one, there is room for inquiry whether the parties had a full matrimonial purpose.

828. So that if a man and woman with the intention of marriage go before a clergyman and the ceremony of marriage is performed in the usual way, it is impossible that that marriage should fail, unless they were in the prohibited degrees of relationship, or one of them is previously married ?——I think it is quite impossible that it should fail except in those ways, if they are parties whom the law allows to marry. We look solely, as the one thing which is essential, to have full consent and matrimonial purpose. We have it expressed in regular marriages and in marriages *per verba de præsenti ;* we presume it in cases of cohabitation coupled with behaviour and reputation as husband and wife ; and we infer it from the *copula* following on the promise. Lord Braxfield put marriage by promise *subsequente copulâ* on this ground, that there was part performance on the faith of an inchoate contract, and that that completed the contract and made it binding. I think that our rules of evidence make the man perfectly safe from any undue advantage being taken of him in regard to this last class of cases, because the promise must be in writing, which is a very deliberate act ; or if not in writing it is referred entirely to his own oath, and he can then tell the whole of the circumstances, and the court judges from these whether there was a deliberate serious promise of marriage. There is no risk of third parties overhearing a conversation between them, or mistaking the words which were used. It is entirely dependent on the acts of the man himself as remembered and admitted by himself.

829. (*Dr. Twiss.*) The promise is unilateral ?——It is unilateral, but it is inferred that there is acceptance from what follows.

830. The *copula* is the consent of the woman ?—— Yes, or evidence of the consent and part performance of the contract.

831. (*Lord Justice Clerk.*) At the same time I do not suppose any case ever occurred in which marriage was sought to be declared at the instance of the man on the ground of promise *subsequente copulâ ?*——There have been one or two. I do not know whether there have been any recently upon that ground, but there have been upon declarations and upon irregular marriage ceremonies. I rather think there was one at the end of the last century even upon promise *subsequente copulâ.*

To return to the English marriage law. Not only are there nullities where the ceremony of marriage is contrived in defiance of the statutory provisions regarding publication, time, and place of marriage, where both parties are cognizant of fraud, but I observe that one of the English nullities has reference to a fraud by one of the parties, although both be not cognizant of it. In the case of a marriage had under the Act 6 & 7 Will. IV. c. 85, in a place not specified in the notice and certificate, then the marriage of both persons is declared invalid. I have had an opportunity of perusing a statement of the law of marriage in England prepared by Dr. Middleton for the use of the Commissioners. This nullity is mentioned at page 20.

832. (*Dr. Twiss.*) In other words, if the parties have a licence or authority to marry in any place, they must go there ?——The knowledge that they have not gone to the place specified does not require to be brought home to both, at least if the statement I refer to be correct. At page 20 it says, "If any person "shall knowingly and wilfully intermarry in any place "other than the church, chapel, registered building or "office, or other place specified in the notice and cer- "tificate, *the marriage shall be null and void.*"

833. That is what you call the Civil Marriage Act, 6th and 7th William IV. By the 4th Geo. IV., the Ecclesiastical Marriage Act both parties are included ?——I understand it to be so, but I presume Dr. Middleton is not speaking of a proper ecclesiastical marriage.

834. Has there been any decision upon that ?——I believe there has been no decision upon it, I am not aware of any. There are some expressions in the subsequent clause which would seem to imply knowledge in both parties, but it may be doubted whether they would apply to the case of marriage in a *place* other than that in the notice and certificate.

With regard to all these statutory nullities it is important to observe that they apply to cases where the parties really intended marriage, as they might have lived as man and mistress without going through any ceremony.

(4.) The next peculiarity in the law of England is the attempt to require evidence of the consent of parents and guardians, which we do not require, and which I understand to be entirely statutory and to have no sanction of nullity attached. I believe that the marriage of minors once effected stands quite good in England notwithstanding the absence of consent, so that there are merely penalties attached to that. We do not require such consent ; but I think it would be exceedingly expedient, if either of the parties possessed property, to cause it to be settled at the sight of the court in such cases, to prevent the marriage of people of tender years for the sake of their money. I believe such cases are exceedingly rare with us, and it is a fact which appears from the registration returns that marriage under age is considerably more common in England than in Scotland, so that the not requiring of this consent does not lead to any undue marriage of people of tender years.

835. (*Lord Justice Clerk.*) Do you mean under the age of 21 ?——Yes.

836. (*Lord Lyveden.*) The age is lower in Scotland ?——Under the age of 21 there are fewer mar-

ages in Scotland than in England, in proportion to
ie population.

837. (*Mr. Walpole.*) The law of Scotland pro-
eeds on the notion that they can give their consent
12 and 14?——Yes.

838. At any time after 12 and 14 the parties
iving their consent can be married?——Yes, just as
England.

839. Just as in England after 21?——No; just as
England before 21.

840. Not without the consent of guardians?——I
g your pardon.

841. Is not that so?——I speak under correction,
t I have understood the marriage of minors once
elebrated to be absolutely good in England; and mar-
ages even of children under 12 and 14, if they choose
cohabit after reaching those ages, I have believed
be binding in England.

842. As to Scotland, supposing two young people
12 and 14, or just turned 12 and 14, come to be
arried, would any objection be taken to it at all by
ie minister, would he inform the relations, or what
ould he do?——In the case supposed of a boy and
irl just passed out of pupillarity desiring to be mar-
ed without the consent of parents, they would
robably have recourse to an irregular marriage.
hey would only apply to a clergyman after procla-
ation of banns, in which case the relations would
robably know; but if they appeared unattended by
elatives, I think the clergyman would probably take
eans to inform the relations. He would separate
ie two, and talk to the girl alone if she was under
ge, or to the boy alone, and ascertain the whole cir-
umstances as far as he could, so as to be sure that
ie thing was deliberate and not a mere freak or
nposition on either side.

843. Practically you find that there are fewer marry
nder age in Scotland, comparing the returns, than in
ngland?——That is so. I thought it would be worth
quiring into, and I have looked at the returns of the
egistrar of marriages in Scotland.

844. In the case of property, have any complaints
een made in Scotland, of people being trepanned into
arriage for the sake of property under age?——
ardly any; really such cases are almost unknown,—
nd we have no abduction cases. I have heard of
arriages under age, I mean where the relatives
bjected, but very rarely.

845. At all events you are not aware that any great
nconvenience has followed from it with regard to the
roperty?——I think I may state that there is no
eneral inconvenience in regard to property.

846. (*Lord Justice Clerk.*) I understood your sug-
estion with regard to the settlement of property to be
his, that if the marriage is made between persons
nder age, or with a lady under age without the con-
ent of parents and guardians, so that her property
alls entirely under the power of her husband accord-
ng to the common law, you would give power to the
elatives to apply to the court to make a marriage
ontract?——That is my suggestion.

847. After the marriage is completed?——Yes.

848. Which of course should have the same effect
s if it were an antenuptial contract?——Yes. It is
ith that view I made the suggestion. The point is
ne on which the two laws could be assimilated.

849. (*Mr. Walpole.*) That you suggest as an im-
rovement on the present law?——Yes. I do not
hink we suffer any inconvenience from the law as it
tands, but I think the law ought to be as I have pro-
osed. It is a point on which the laws of the two
ountries may be assimilated with advantage.

850. (*Lord Justice Clerk.*) That might avoid a
ossible risk?——Yes. I also think there should be
very encouragement to marriages *in facie ecclesiæ*,
nd it would be very proper to extend the alteration
have suggested to all irregular marriages whatever.
have sometimes seen cases in England of very old
eople being trapped into marriages for the sake of
heir property. I have read of such cases in the news-
papers. Such people may require protection as much as minors.

I find that this matter of the consent of parents and guardians is another point to which all systems of law that attempt to demand it find it necessary to provide a remedy for its absence. In America it is required in very few states, and there, I think, never beyond the age of 17 or 18. A curious experiment was tried in New York. There by the Revised Code they introduced consent.

851. They introduced consent as necessary?——They introduced consent as necessary, and almost immediately repealed the provision. They also introduced forms of registration as essentials of marriage, but they immediately repealed them too. These changes were introduced by what is called the Revised Code of New York, and within four months a new statute was passed repealing them. A Commission has been sitting recently revising and reconsidering "the Revised Code," and they have now issued it as finally disposed of by them, and they propose to leave marriage to depend upon consent, to be proved in the same way as any other contract.

852. Is that a very recent revision of the code of New York?——It is only just published, and has not, I understand, been disposed of by the Legislature. The code, as disposed of by the Commission, has very recently arrived in this country. It says, sect. 36, "Mar-
"riage is a personal relation arising out of a civil con-
"tract to which the consent of parties capable of
"making, it is alone necessary. Consent to a mar-
"riage may be manifested in any form, and may be
"proved like any other fact." Then there follow provisions for what they call "authentication," but these are not compulsory; their adoption is specially stated to be merely optional.

I see that one of the objections to the marriage law of Scotland stated to the committee in 1849 was that under it people were exposed to marriage with parties who were married already in Scotland, cases of bigamy, where there was no available evidence of the first marriage. Now I see that the English law does not afford any protection in England against bigamy. On the contrary, as far as I have had the means of looking at the returns, there is a greater amount of bigamy in England than in Scotland.

853. You mean in proportion to the population?——Yes; and there is a peculiarity which I observe, viz., that there is a large number of cases entered in the returns under the head "crimes committed," a smaller number under the head "parties tried," and a still smaller in the column titled "number of convictions." If the "crimes committed" are greatly in excess of the "parties tried," I infer that there must be some great doubt as to the fact of marriage, one or other of the marriages, or some defect in the registration, some difficulty in tracing them. I do not know whether any returns exist, at all events I have not seen any, showing whether we have a like gap in Scotland between the number of "crimes committed" and of "cases tried," but I observe that the average difference between "trials" and "convictions" seems to be very nearly the same here as in Scotland.

854. In cases of bigamy?——No; generally as regards "offences against the person." I only looked at that class of cases. I have on this point merely consulted the "Miscellaneous Statistics" presented to Parliament, and not the detailed ones. The great difference between the convictions and the trials, and between the trials and charges, seems to me to demonstrate that the English system of registration has not operated to check bigamy or to enable it to be proved.

855. (*Dr. Twiss.*) That might arise perhaps from the accusations being rashly or loosely made, might it not?——Of course it might; although one would hardly expect such silly charges to be made as these must be if the state of the law were really such as to secure a remarkably high degree of certainty as to the fact of marriage. It might also arise from there being no public prosecutor in England, and the

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parties settling or compounding the cases after the charges were made.

856. (*Lord Lyveden.*) You stated at the commencement of your evidence that you thought there was no dissatisfaction with the present state of the law in Scotland. Would you carry that further, and say that there was such an attachment to it that it would be an unpopular act to alter it?——I think it would.

857. (*Mr. Walpole.*) Except by doing away with the promise of marriage *per verba de præsenti?*——I did not speak of public opinion in Scotland as to marriage *per verba de præsenti.* I think that is not so much talked about in Scotland as the other modes of irregular marriage. In discussing the abolition of irregular mariages, I should say that popularly marriage by promise *subsequente copula* is meant. The suggestion that *verba de præsenti* should not be taken as evidence of matrimonial consent, unless followed by cohabitation or *copula*, is not made as one on which the popular mind is made up; I make it from myself, and I should anticipate no general objection to it. It is a point which has been, and indeed is much discussed by jurists.

858. (*Lord Justice Clerk.*) Is not there a general impression in Scotland that the constitution of marriage by the bare interchange of consent is something that rather came from the House of Lords than from anywhere else?——The first Scotch case in which that doctrine was settled was, if I remember, M'Adam's case, which went to the House of Lords by appeal, but I think the Lords affirmed the judgment of the Court of Session. The doctrine that *verba de præsenti*, which were quite unequivocal in themselves, could be construed by the conduct of the parties, came, I think, from the House of Lords.

859. (*Mr. Walpole.*) Did not it really turn on the question what is sufficient evidence of the consent?——I think that is the question. Consent is the matter which makes the moral obligation, and I think there would be a great distaste in Scotland to peril all on the register, and I think there is no desire to get rid of the ecclesiastical ceremony. That is the ceremony which parties prefer, and which they have recourse to generally when they wish to make an irregular marriage public and put it on the register.

860. Would they object to the requisition that they should furnish at the time, or very soon after the marriage, some evidence that consent had been given, and that therefore the marriage was completed?——I do not know whether they would object or not, but I think that no practical inconvenience worth naming occurs just now.

861. Because, ordinarily speaking, one would think it was very important, with regard to such a contract as marriage, that there should be some evidence of the consent, which is the foundation entirely of marriage in Scotland?——Yes; therefore they are in the habit of bringing their actions soon, and of availing themselves of the register.

862. But not immediately, do they?——Not immediately. So far as I know they must register within three months, or must have recourse to a court in some form—either be fined for an irregular marriage or get their marriage declared.

863. Is that with regard to all marriages in Scotland, that they must register within three months?——There is a provision for correcting the register at any time, but in regular marriages the parties must return the schedule of marriage to the register, I think, within two or three days of the marriage taking place.

864. You are speaking of marriages *in facie ecclesiæ?*——Yes.

865. I am speaking of the other marriages?——As to the other marriages, there are three ways of getting them registered—by both parties applying to the sheriff of the county within three months, by their going before a justice of the peace and getting convicted of an irregular marriage and recording the conviction, or by obtaining a decree of the Court of Session declaring the marriage, and getting that decree registered.

866. Do they have recourse to the first, the second, or the third, ordinarily?——They ordinarily have recourse to the clergyman, and have the marriage celebrated *in facie ecclesiæ.*

867. Does that ordinarily take place within the three months?——It very often takes place after the birth of a child.

868. That might still be within three months. What I wish to get at is whether the evidence of the marriage is usually produced and produceable within three months from the time of the consent being given?——Of course it is produceable unless where it depends on the oath of the man. But it is by no means always produced.

869. To take that case which was decided in the House of Lords, the parties corresponding for years as husband and wife, and there being no evidence of their living as husband and wife together, and that was held to be good. Where was the evidence of the marriage then?——I should not like to express any opinion as to the evidence in that case. It is not one, if I may say so, which the profession in Scotland much like, if I am right in supposing that the question refers to the case of Leslie, which was not, I think, appealed to the House of Lords. That case, assuming it well decided, merely shows that the evidence did exist in spite of the absence of registration, not that there was any suffering from the want of evidence.

870. The evidence in that case existed simply in the shape of letters?——Simply in the shape of correspondence between the two parties. That is one of the cases which induces me to think that that branch of our law might be modified, that bare consent, where not accompanied by cohabitation or *copula*, should not be held to be full consent of the parties with a matrimonial purpose. The correspondence in Leslie's case was a very remarkable one, and I would not insinuate that the parties ever for one moment entertained any purpose short of marriage.

871. In the case of an irregular marriage they are not compelled to register within the three months at all, are they?——They are not compelled, only they must come into court in some shape if they do not.

872. Would the people of Scotland have any objection to requiring, in the case of every marriage, that there should be some registration of the marriage within three months of the time when the contract was made?——I do not know what the people of Scotland would do, but I should think it very inexpedient to require registration within three months under pain of nullity. If by "the time when the "contract was made," be meant the time when the law holds matrimonial consent to have been exchanged, I should hold it almost equivalent to abolishing the law of promise *subsequente copulâ*, which I regard as the most inflential of the means by which parties are led to do all that can be done to regain position after they have gone astray. If they be pulled up too sharp to a certain day there will be great risk of the law leading the man to abandon altogether the woman with whom he has had connexion, where now after a little he is induced to marry her.

873. You would agree in the opinion which I think the Lord Advocate stated here, that by leaving the law as it is, you have a greater chance of their coming into the regular marriage afterwards *in facie ecclesiæ*, than if you required them to register in the interval?——I think so. The people may be led to do what is right where they cannot be driven. It is of such vital importance to the woman generally to have the marriage recorded that wherever she sees there is any breaking off she is almost sure to bring her action to get it judicially established. It is her interest to preserve the evidence, and she is not likely to be willing to part with it, or to forego the opportunity of registering it if existing in a shape in which it can be registered, or getting it declared if it be not in such a shape.

874. (*Lord Justice Clerk.*) The question rather embraces two points; would there be any objection to require that an irregular marriage should be registered within, say three months, under penalty, but without inferring any nullity?——I think there would be no objection to that, and I think every person would approve of penalties, provided they were not so heavy as to amount to a check on registration. I think an extension of the power of applying to the sheriff, in the way pointed out in the Gretna Green Act, preferable to the method of getting convicted of an irregular marriage and recording the conviction. I would discourage irregular marriages, and I think penalties for non-registration would be a quite proper discouragement; so I think the prevention of securing the property by the irregular marriage would be highly expedient, to the extent at least of causing settlements to be made at the sight of the court.

875. What you object to, as I understand, is that there should be a registration required within a fixed time, the omission of which should invalidate the marriage?——That is what I object to. I object to perilling the substance or the evidence of the marriage upon the register, and I do not see that it has ever been done absolutely. It seems undesirable to impose forms the observance of which the state dare not enforce. I do not know to what extent forms are regarded as essential among those nations which have adopted or followed closely the Code Napoleon; I rather think no sanction of nullity attaches to the non-observance of forms, and that to some extent habit and repute is admitted in some shape or other. As I have mentioned already, the French code lets it in after the parties are dead for the sake of the family, although they make marriage more a matter of police than any other nation have done. I should think it most inexpedient to have marriage reduced to a mere matter of police regulation, and I am sure that this is not desired by the people of Scotland, who now enjoy a marriage law entirely devoid of technicalities, which, having regard to the facts of nature and the habits of the people, leaves marriage free, unrestrained, and open to all (not within the forbidden degrees) who are capable of exchanging matrimonial consent, such exchange of consent being the one essential to marriage.

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If the parties have entered into an engagement to marry and placed themselves in such a position that the engagement cannot be broken, *rebus integris*, then that law enforces the moral obligation on the parties to marry; on the other hand, that law recognizes and favours the religious element in marriage, by enacting penalties against those who contract marriage without the sanction of a religious ceremony; while at the same time it does not disregard its civil character, inasmuch as it allows the contract to be entered into by any civil form expressive of consent, and provides the means of recording all marriages for the preservation of evidence.

This system suits the habits and manners of the people in various important points as to which there is reason to fear that any change imposing forms, as essential, might create mischief. The system works well, and produces none of the evils which might be anticipated from so much freedom. There is no excess of improvident marriages between persons of tender years, no excessive risk of bigamy, at the same time there is the most absolute and perfect certainty and security to all who marry openly.

Adjourned.

Saturday, 5th May 1866.

PRESENT:

THE RIGHT HON. THE LORD CHELMSFORD.
THE RIGHT HON. THE LORD NAAS.
THE RIGHT HON. THE LORD LYVEDEN.
THE RIGHT HON. SPENCER HORATIO WALPOLE, Q.C., M.P.
THE RIGHT HON. THE LORD JUSTICE CLERK OF SCOTLAND.
THE SOLICITOR GENERAL FOR SCOTLAND.
TRAVERS TWISS, ESQ., Q.C., D.C.L.

LORD CHELMSFORD IN THE CHAIR.

The Right Hon. Sir GEORGE CLERK, Bart., examined.

876. (*Lord Chelmsford.*) I have no doubt you have turned your attention to the marriage law of Scotland, and the Commissioners will be very glad to have the benefit of any observations which occur to you on the subject; would you wish questions to be put to you, or would you like to give us the result of your own consideration of the matter?——I should prefer that questions should be put to me, because of course any attention I have paid to the marriage law in Scotland is of a very general and loose description. I have not been a professional man, and I have never had much occasion to turn my attention particularly to the subject.

877. The Commission are fully informed of the state of the marriage law in Scotland, and particularly of the great division into regular and irregular marriages; what I think they particularly desire to know is, the operation and effect of irregular marriages upon the morals and happiness of the people?——I should say in the first place, as far as I am aware, the number of irregular marriages bear so small a ratio to those which are contracted in the proper legal form that they cannot have any very material effect upon the moral condition of the people of Scotland generally.

878. We have had some evidence that the proportion of irregular to regular marriages is almost infinitesimally small, being in the proportion, I think, of 20 to 20,000?——I should have said, if I had been asked to give a rough guess, that the irregular marriages were not one in a thousand.

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879. There is one species of irregular marriage by promise *subsequente copula*. I dare say you are familiar with that; what is your opinion with regard to that marriage as to its moral effect?——My own opinion on that point would be that it acts as a defence to the weaker sex; that where it is known that a promise given, and upon the faith of which a woman surrenders herself to a man, shall be a binding marriage upon him, it certainly checks on his part any attempt to deceive the woman, and I think in that way acts as a protection to her. I should say, looking at what one sees almost daily in reports of trials for breach of promise of marriage in England, we find a great number of cases where there can be no doubt of a *bonâ fide* promise having been given, and that although the woman has subsequently had a child by the person, the marriage has been broken off, and in many instances a marriage with another party has been contracted by the man. That is an evil which I think the law of Scotland does afford some protection against.

880. May it not have the effect of facilitating seduction by reason probably of an ignorance of the law, a verbal promise being made to marry, and then the man be allowed to have intercourse with the woman?——There is no doubt that a man ignorant of the law of Scotland, of a weak mind, may be drawn

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in by a designing woman to give her a promise when he had no intention whatever at the time of contracting marriage, but if there are such cases they are extremely rare; I am not aware of any such case.

881. May not a simple and innocent-minded woman be led to surrender her person upon a promise of marriage, which would not be binding on the man, being merely verbal?——Even in that case it would not be very different from what we know does take place in England. I believe in that case where there was a mere verbal promise without any further evidence the only remedy would be a reference to the oath of the man.

882. That would not do, because in the case of a promise of marriage *subsequente copula* it must be a written promise by the law of Scotland?——Oral evidence, I think, might be admissible.

883. May there be a reference to the oath in that case?——There may be a reference to an oath in the failure of any other means of proof, as I understand.

884. I was not aware that there might be in that case a reference to oath to establish a marriage. I thought that in the case of a promise *subsequente copula* there must be a written promise proved. Considering how very few there are of what are called irregular marriages, do you think it would be an undesirable or inexpedient thing to do away with these altogether, and to require that marriages by consent merely, which we may call irregular marriages for the purpose of distinction, should only take place before a registrar or some official person?——I should say that the general feeling of the people of Scotland, as far as they are themselves concerned, would be in favour of the existing law. The only proof I could give of that would be this; that some years ago a bill, which I believe had passed the House of Lords, was discussed in the House of Commons; it was brought in by Lord Rutherford, at that time Lord Advocate. I think the main feature of the bill was that the only mode of establishing a marriage was the fact of its being recorded before a registrar. At that time there were most numerous petitions from a great variety of public bodies in Scotland against that bill; and when the division upon it took place in the House of Commons, although there was a majority in favour of the bill, it was so small that I think Lord John Russell said he must take time to consider, and the bill was afterwards withdrawn; but in the division that took place there were Scotch members of every shade of politics; it was not at all a party question at the time.

885. Can you account for that general feeling, considering the strong disinclination to engage in these irregular marriages, and their being so very few in number?——That would be very difficult to say. I think one reason was, that if some particular form is required, and made indispensable, any omission or error in carrying out the provisions with respect to that form might be fatal to a marriage, although there was perfect *bona fides* in each of the contracting parties. The marriage might be void from an error hardly within their knowledge.

886. That might be very well guarded against by provisions to prevent that effect being produced; but would there be any objection, as with marriages *per verba de præsenti*, that that declaration should be made in the presence of some official person, who should make a record of it afterwards?——I think they would object that there was not the power to make that declaration before credible and competent witnesses in any other place, that it must be in the registrar's office, and attested by that officer.

887. Would that be a very reasonable objection in the mouths of persons who do not seem disposed to take advantage of the law as it stands?——Suppose there was a case of connexion between a man and woman, and that there were children born, and there might have been reasons existing previously why the marriage should be kept secret, and that he should make that declaration as soon as he had made up his mind to acknowledge the woman as his wife before persons in his own house; suppose by some visitation of Providence one of these parties should die before there was any opportunity to go before a registrar, I think the people in Scotland would consider it hard that the innocent children, where the parents had quite agreed to live as man and wife, should be declared illegitimate, and an irremediable injury inflicted upon them.

888. Individual mischief must arise in some degree from almost every law that you can pass. Would that hypothetical case be sufficient, in your judgment, to render it inexpedient to alter a law of which people do not seem disposed to take advantage?——I think I said before that the people of Scotland, as far as my individual opinion goes, are in favour of the existing law, and that they do not apprehend that any evil consequences to morality particularly have arisen from what is considered in England the very lax state of the law in Scotland as to the contracting of marriage.

889. But what great change would that produce, allowing a marriage by consent, just as it exists at the present time, but merely saying that that consent shall be given by some person clothed with a certain character, and who should then make a record of the marriage?——That was the main provision of the bill which was brought in by the Lord Advocate Rutherford, and which certainly was not acceptable to the great bulk of the people of Scotland. Though, theoretically, the law of marriage in Scotland may be defective in many particulars, still, if it is agreeable to the feelings of the people there, and if they are unwilling that there should be any change, and if no case can be made out against it as showing that it leads to immorality, or any evil consequences affecting the people of Scotland themselves, I should rather think it would be expedient to allow it to remain. I am quite aware of the great evil that must arise from the discrepancy existing between the law in England and the law in Scotland upon the subject of marriage, and that if it were possible to assimilate them, or to amalgamate them completely, it would be a great advantage, if it could be done without materially affecting some of the advantages that the people of Scotland think they derive from the state of the law.

890. It would be done immediately by allowing marriages to take place before the registrar, and no other marriages to be permitted. There would be an assimilation of the law of England and Scotland immediately by that simple change?——Yes. Whether there has been any change of opinion in the people of Scotland since 1849, when the bill to which I referred was before the House of Commons, I do not know, but that was argued at that time; it was a perfectly simple change, but what they felt was, suppose some irregularity takes place, a good marriage might be made void. As the law at present stands, if persons contract a marriage regularly under the regular law, after proclamation of banns, it could not be made void from any informality whatsoever, either as to misnomer in the banns, or any error as to recording it, or misnomer of the parties contracting the marriage, provided there was sufficient proof of the identity of the persons.

891. We are always in the habit of considering the Scotch a practical people, but this objection to the change of the law seems to be rather theoretical and sentimental than anything else, as to any practical inconvenience which would arise from it. It must be very small indeed, if any. I am alluding, of course, to the small proportion of irregular marriages to regular marriages, which, as we have had evidence, is as 20 to 20,000. You still think, notwithstanding the small number of such marriages, that there would be a general feeling in Scotland against the alteration of the law in this respect, preserving the marriage by consent, but merely saying that that consent should be given, as I have already stated, before some official person clothed with an official character, a registrar, as he is in England?——And without such registration, that no other evidence shall be admissible?

892. No, that is another consideration?——I wish

to know whether the registration was to be indispensable?

893. That is a thing which, of course, one must consider very carefully—that the marriage should take place before the registrar or some official person; but whether a defect of registration would invalidate a marriage is quite a different question, and one of very serious importance. I do not believe that any of the Commissioners ever had a notion that any omission of any form of that kind ought to be held sufficient to invalidate a marriage where it is the fault of the registrar, or that it should be, in fact, the only evidence of the marriage. I do not know that anybody has ever suggested, because it is not the case in England, that the marriage register is the only evidence of the marriage; and indeed it is only in a very few cases that proof of actual marriage is necessary. Cohabitation as man and wife is sufficient evidence of the existence of the relation. Therefore stripping the question altogether of the idea of invalidating marriage for want of observance of forms, I merely would refer to your judgment and consideration whether there would be any reasonable practical objection to the small change I have mentioned which would assimilate the law of Scotland to the law of England?——That would be reducing the acknowledgment that they were man and wife before the registrar almost to nothing, because, suppose there was any error or any informality, you must go back upon other evidence to prove either by habit and repute long-continued cohabitation, or by the knowledge of other parties that they had consented to become man and wife. You would be driven back upon that, otherwise your registration would be a mere form, and I should think of very little value.

894. The two things appear to me to be perfectly distinct, and ought to be kept distinct in our minds—the fact of the marriage and the evidence of the marriage. What I wish at present particularly to attend to is the fact of the marriage?——The fact of the marriage may be established in Scotland by a declaration at any time and place before any witness, or, I believe, by an interchange of writings to that effect. The parties stand in the relation of man and wife to each other, then what you want is what evidence is required to establish that fact?

895. What I want is simply this, to know whether, requiring that that declaration of mutual consent shall take place before the registrar, there would be any practical objection to noticing that simple change in the law?——There may be in individual cases family reasons why the marriage should not be made public, which it would be, by a declaration before a public officer, and yet at the same time an anxiety to secure the legitimacy of any offspring of that connexion.

896. Could there be anything more? The registrar would be the only person who would be able to give information on the subject beyond the immediate friends. They would go with their friends to the registrar?——The case I was supposing was where there was some object or family reason that the marriage should be concealed, and therefore it was not made known to the family of one or of both parties.

897. (*Lord Lyveden.*) You mean that a search before the registrar would make the register open to the public to inspect?——His books must necessarily be open to the public I apprehend.

898. (*Lord Chelmsford.*) Can you imagine a state of things in which it would be desirable, I will say for the public, that the marriage should be kept secret in that way, and yet that there should be the means at some future time of bringing forward evidence of the marriage?——I do not mean to say that it would be expedient that any encouragement should be given to the contracting of clandestine marriages, but, at the same time, if they took place and there was issue of such marriage, I think it would be very hard to say that the issue should be bastardized because there had been no declaration before a public officer, although there had been such an exchange of mutual consent as was clearly binding upon the two contracting parties.

899. The greatest encouragement is given to clandestine marriages by the fact that the law permits them; it wants no other encouragement. You do not think it is objectionable that there should be encouragement given to clandestine marriages?——If you prevented clandestine marriages altogether, might there not, in the case of young persons in the weakness of love, be an illicit connexion that would be more injurious to morals? The question is whether it is desirable not to give that safety valve?

900. (*Lord Justice Clerk.*) You spoke of the evils of the existing difference between the marriage law of England and Scotland; is not that very much abated by Lord Brougham's recent Act?——As far as it puts a check upon these Gretna Green marriages it prevents minors from evading the law in England by coming down and declaring the marriage within five minutes of their crossing the Scottish border.

901. You are aware, I suppose, that the effect of that Act has been to put an end to those Gretna Green marriages altogether?——I understand so.

902. (*Lord Chelmsford.*) It requires 21 days residence?——Yes.

903. (*Lord Justice Clerk.*) Gretna Green marriages when they did exist were entirely between English parties?——Of course it was quite unnecessary for any person to move from one part of Scotland to another, although I believe there are persons who did so.

904. Speaking of the distinguishing principle of the law of Scotland in requiring moral proof of consent to establish a marriage, do you not attach importance to the certainty which that creates in the case of regular marriages?——It certainly prevents the possibility of any defect in form rendering them void. I believe that the tendency of legislation of late years in England has rather been in the same way, that marriages shall not be made void, as they might have been some 30 or 40 years ago, from some informality, without the parties contracting the marriage being aware of it at the time.

905. According to the existing law in Scotland, a regular marriage taking place in the presence of a clergyman is absolutely certain?——Absolutely certain.

906. And cannot possibly fail from any defect of form?——No.

907. Even although both parties wilfully committed some defect of form?——The omission of banns would not affect the validity of the marriage, although it might render the parties liable to penalties.

908. With regard to the registration of irregular marriages, I suppose it would not interfere with what you consider to be the benefit of the present law if registration were required and enforced by penalty, if only it were not made indispensable to the constitution or proof of the contract?——No. I do not know that there would be any objection to requiring parties who had made a declaration elsewhere of their standing in the relation of man and wife under penalty to register that within a limited time. I am not aware that there would be any objection to an enactment of that sort.

909. All that you object to in the proposed registration is that the recording of the marriage should be indispensable to its proof?——Yes, but I understood that that was not likely to be insisted upon in any quarter.

910. In speaking of the effect of the constitution of marriage by promise and subsequent *copula*, can you say as a matter of fact that seduction in Scotland is a very uncommon thing comparatively?——I should think that seduction where a promise had been given, one would always presume, was more between persons of different ranks in society. I am not speaking of what you may call seduction, namely, the amount of immorality that exists among the female part of the population in many agricultural counties in Scotland; that arises from perfectly different causes than anything connected with the law of marriage.

911. Are you aware whether concubinage is at all

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common in Scotland, or whether it is rare?——I should say among the upper classes rare.

912. Among the lower classes?——Among the lower classes I should think there were still fewer instances of it. They all find it necessary to have their connexion sanctioned by a regular marriage in the church.

913. (*Lord Chelmsford.*) What do you say as to the middle classes?——I should have said the middle and upper classes. I really do not know of any instances.

914. (*Lord Justice Clerk.*) Are you able to say that it is a rare thing in any class?——As far as my own knowledge goes I should say certainly. I do not think I should be able to point to any particular instance at the present moment.

915. (*Lord Chelmsford.*) Concubinage is so very easily converted into marriage in Scotland?——It would be by lapse of time, especially if the position of the woman was such that all those who were acquainted with them considered her as the mistress of the family and the wife of the party. Of course there may be many instances where marriages may be established from the fact of long cohabitation.

916. I think you said that during the time the Gretna Green marriages prevailed that persons in Scotland even were in the habit of repairing there?——I heard of one instance.

917. There would be no occasion for them going to Gretna Green?——I believe that on the east coast there were a great number of irregular marriages solemnized in Scotland, not between Scotch parties, but by people who came from the adjoining county of Northumberland; not runaway marriages, for very frequently the bridegroom and bride were accompanied by their friends, and I believe the principal reason for it was to avoid the expense of the marriage fees in their own parish church.

918. There is great facility in contracting a clandestine marriage, the parties being able to remove away from the place where they are known and where they live, and then make their declaration in the presence of witnesses prepared for the occasion. Do you think that a desirable thing?——I think the question might in some degree resolve itself into this. Is it more expedient to run the risk of abuses by making marriages too easy or to lead to concubinage by throwing impediments in the way of persons contracting illegal marriages? By the law of Scotland a connexion very doubtful in its nature and origin may be set up as a marriage, but you are quite safe that no good marriage can ever be set aside there.

919. (*Dr. Twiss.*) Do you know what was the maximum cost of a Gretna Green marriage?——That would depend very much upon the parties.

920. (*Lord Chelmsford.*) I daresay you are aware that these irregular marriages, as they are called, are offences against the law?——I am aware of that.

921. That is another ground of consideration, whether it is desirable to continue marriages of that description which are really offences. The 17 & 18 Victoria, chap. 80., sec. 47., provides that "It shall "be competent to the persons intending to contract "marriage to require the registrar of the parish to "attend at the solemnization thereof at any place "within such parish." Then he is to be entitled to a certain fee, and is to make a record. Section 48 provides that "In the event of any persons being con-"victed before any justice of the peace or magistrate "of having irregularly contracted a marriage, it shall "be lawful for either of the parties to such irregular "marriage, and they are hereby severally required, "to register such marriage in the parish in which "such conviction shall have taken place." Then the 49th section is:—"The magistrate before whom, or "the clerk of court in which, any such conviction "has taken place, and the clerk of the court in which "any such decree of declarator has been pronounced, "establishing any marriage as aforesaid, shall, upon "such conviction so taking place or upon such decree "being so pronounced, give information to the regis-"trar of the parish in which such conviction took "place, and, in case of a decree of declarator, to the "registrar of the parish of the domicil, or of the "parish of the usual residence of the parties to the "action of declarator, by notice of the import of such "conviction or decree in the form of Schedule (K.) to "this Act annexed; and any such clerk of court "failing so to do shall be liable in a penalty not "exceeding 40*s.*, which may be prosecuted for and "recovered at the instance of the registrar." So that in fact that is a mode of registering irregular marriages, as they are called here. There may be a distinction between clandestine marriages and irregular marriages, but here irregular marriages are treated under one head, and there is a mode of registering those marriages through a conviction before a magistrate?——That, I apprehend, would apply not to a clandestine marriage so long as it is kept secret, but that when the parties make a declaration before witnesses that they are married, and cannot show that they have either been married regularly in the church after the proclamation of banns or before a registrar, that in order to secure some evidence to establish that marriage afterwards they are bound under that penalty to go forthwith and register them.

922. Are you able to inform us what the exact distinction is between a clandestine and an irregular marriage?——I believe the phrase clandestine marriage was applied to marriage where there was a sort of mock ceremony celebrated by a person not in orders. Such, I believe, at one time was the practice of the blacksmith at Gretna Green; but any person, not being a regular clergyman, who should marry persons and pronounce a nuptial benediction would be liable in a penalty, and that would be called a clandestine marriage. I believe in all cases of irregular marriage the parties would be liable to ecclesiastical censure. I merely wish further to say that I do not consider, and I suppose no person will profess to consider, the marriage law of Scotland, or perhaps the marriage law of England as it is at the present time, in the most perfect state possible, and that it might not be susceptible of some improvement. I have no doubt that the wisdom of this Commission may devise some modification of the law of Scotland which, without interfering with the great principles of the existing law, might remove the evils which arise from the discrepancies that at present exist between the laws of the two parts of the United Kingdom. It may be a matter of sentiment more than anything else, but I believe the people of Scotland, not being aware of any evil as affecting that country arising from the present state of the law, would be averse to any alteration, anything that would throw any great impediments in the way of contracting a marriage which should be binding upon the parties, and which might affect the interests of the issue; and that unless some evils can be shown as arising in England from the difference of the law, I think people in Scotland would be better pleased to remain nearly as they are.

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The Reverend Principal Barclay, D.D., examined.

923. (*Lord Chelmsford.*) Will you be good enough to describe what you are?——I am Doctor of Divinity and Principal and Vice-Chancellor of the University of Glasgow.

924. Of course your attention has been frequently called to the marriage laws of Scotland?——Yes, I have paid as much attention, I believe, as most of my brethren connected with the church have done.

925. Will you be kind enough to give the Commission the result of your observation with regard to the operation of the law?——In a few words I may state, that my conviction is, that the present law of Scotland has operated, and is operating very beneficially, whether we regard the domestic, the social, or the moral effects which it produces.

926. I will take one particular branch of the law

ith regard to irregular marriages—marriage by pro-
ise *subsequente copula*. Do you think that is a
sirable law, and that it produces moral effects?——
erhaps that does open the door to the deception of
e female; but it is a question for the law courts to
termine whether that promise is of such a nature
to be binding in other civil cases, because the law
ards marriage in Scotland as a civil institution.

927. We will take the marriage *per verba de præ-
nti* and mutual consent of the parties?——I believe
at that has operated beneficially too, both in a
cial, and, I would add, in a domestic sense also;
mparing the results with what takes place in other
untries, where the law is more stringent. As to its
oral influence, I have no doubt whatever.

928. Will you be good enough to state in what
ay you think a moral influence is produced?——I
ould say that those irregular marriages, as we com-
only call them in Scotland when they are not
erformed by clergymen in my opinion have a good
oral influence by the suppression of open concubi-
ge; parties are cautious how they commit them-
lves in that manner, knowing they might be bound
r life as man and wife.

929. Commit themselves, in what way?——Commit
emselves to the relation of man and wife, *per verba
præsenti*.

930. I do not exactly see how that contract of mar-
age *per verba de præsenti* produces that effect?——
should compare it with a country in which the law
different, and where we see open concubinage pre-
iling to a far greater extent than in Scotland;
mparing the one law with the other, and comparing
e effects of the two laws, I arrive at that con-
usion.

931. As I gather, you think that concubinage would
fact be evidence of consent *per verba de præsenti*?
—Yes; if the parties were living openly in that
ate and giving the impression to the public that
ey were man and wife.

932. But you are aware that those marriages that
e call irregular marriages are very uncommon in
cotland?——They are uncommon certainly, and it is
ery seldom that parties belonging to the higher or
espectable classes of society are found marrying in
at way.

933. Being so uncommon, what evil consequences
o you anticipate from requiring that these marriages
ould take place in some more formal manner; by a
onsent expressed, for instance, before the registrar?
—If a man had any intention of deceiving a woman
e never would go before the registrar, because it
ould constitute a regular marriage; he, perhaps,
ersuades her that she is his wife by some artifice or
ther.

934. I do not think you quite understand me.
What I meant to say was this: considering that irre-
ular marriages are very uncommon, what evil con-
equences do you suppose would result from requiring
hat those marriages should take place before the
egistrar?——I have no objection whatever to their
arrying before the registrar; but if you abolish the
o-called irregular marriages, you would then do
way with the check which, I believe, the present
aw has upon concubinage. You open the door to
he deception of the female.

935. Only that you might still leave the cohabita-
ion as evidence of a marriage having taken place,
lthough that marriage might be required to take
lace before the registrar, the cohabitation might
reate a presumption of the marriage having taken
lace?——If the cohabitation has been so open as to
mpress the public with the idea that they were man
nd wife, in that case, I conceive, there is a decided
heck upon it by the present law; whereas if you
ere to do away with the present law of habit and
epute which, I think, is the term given to it in
Scotland, you at once open the door to open concu-
inage. I do not say that you can check the vice,
ut I speak of the moral influence of such a state of
he law.

936. Habit and repute is frequently stated as a head of the law of marriage, but I believe it only amounts to evidence?——Exactly.

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937. It does not constitute marriage itself?——I believe not; but it is a material point in the evidence. I should say, further, that the cases in which domestic unhappiness has resulted from such marriages in Scotland are extremely rare; too exceptional, in my opinion, to form the subject of legislation.

938. What description of marriages are you alluding to now?——Irregular marriages; parties having, by written instrument, or in the presence of witnesses, declared themselves to be man and wife.

939. The marriages themselves being so rare, of course the unhappiness arising from the marriages must be rare also?——But there is another point which weighs with me. I look to those irregular marriages, and I compare them with the results in a moral point of view, and a domestic point of view, which are produced in countries in which the marriage law is more strict. We have, for instance, a court of divorce in Scotland as there is in England; but few instances arise of parties in Scotland who have been irregularly married, and, I am proud to add, of those who have been regularly married, in which the Supreme Court of Scotland is applied to for a divorce. Now if we look to the practical results of the stricter law of England, as exhibited in the Court of Divorce, and compare them with similar results in the Supreme Court of Scotland, I certainly see no reason for adopting the English stricter law in preference to what is called the present lax law in Scotland.

940. Has the number of divorces in England anything to do with the constitution of marriage?——I think it has.

941. But how does the mode in which marriage is constituted have any influence on the number of cases of adultery?——It affects the argument, I conceive, in this way: that your stricter law in England does not have a tendency to prevent unhappy marriages, and the sins which accompany them, and, therefore, if adopted in Scotland, we could not expect it to have a better effect than our law has at present.

942. I do not quite follow you?——If an argument is to be founded on the result of the two marriage laws as in England and in Scotland, we compare them as they appear before us in the divorce courts. Do unhappy marriages arise from the present law in Scotland in any proportion to those which occur in England?

943. Do you attribute that to the mode in which the marriage is constituted?——No; but it is the strictness of the law. I say the strictness of the law which limits the mode has no effect in checking immorality.

944. But strictness in what sense and in what manner?——Strictness as to the mode of celebrating marriage, compared with what is called the laxity of the law in Scotland. I can see no moral good that would arise from changing the law, when you compare the results in the two countries; I do not say that the one arises more than the other from the mode of celebrating the ceremony.

945. I certainly thought you said that?——No; but when with the stricter law of England we see so many unhappy marriages, I cannot conceive that the same law introduced into Scotland would tend to increase the happiness of the married parties.

946. I cannot understand how the form of marriage, the mode in which marriage is constituted, can have the slightest effect on the happiness of the married life?——I think in this way: it is not the immediate cause, but if you compare the two laws as existing in England and in Scotland, and then look at the moral results and the domestic results, I say that even in England where you have the stricter law, both the domestic and the moral results are by no means so satisfactory as they are in Scotland under the laxer law, and therefore I see no reason for changing from Scotland to England.

947. (*Lord Lyveden.*) That may be perfectly true,

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but the fidelity of the parties after marriage cannot be affected by the form of the marriage?——I am not very sure of that. I do not at all agree with that. It is alleged against the Scotch irregular marriages that they have an immoral effect, and that I cannot admit.

948. (*Dr. Twiss.*) What I conceive you to mean is that the greater facility of contracting a marriage in Scotland does not lead to a greater number of imprudent marriages or marriages which apparently turns out unhappy?——Clearly I mean to say that, and therefore I can see no reason why the law should be conformed to that of England. If no domestic, social, or moral evils result from the law of Scotland, I would ask why it should be changed? and I should like to know a probable reason shown for the advantage of the change; then I should be in favour of it.

949. When you say irregular marriages are rare, do you mean that it is rare as a matter of fact that parties contract these irregular marriages, or that it is rare that parties who have contracted irregular marriages rest content with the irregular marriage, but proceed to a regular marriage?——I mean by an irregular marriage those that have not either gone before the sheriff and declared themselves to be married persons, or those that have not been regularly married by the ecclesiastical authorities.

950. Do you mean, as a matter of fact, that the irregular marriages are rare, or that it is rare that parties who have contracted irregular marriages rest content with them?——They do. I have no evidence of their being unhappy in the connexion of man and wife.

951. (*Lord Justice Clerk.*) The question intended is this: Do you mean that irregular marriages are absolutely of rare occurrence, or do you mean that it is a rare thing that parties should contract an irregular marriage without also going on afterwards to make it a regular marriage. Which of those two do you mean?——That is a new form of the question altogether. I believe that where irregular marriages have been contracted by any of those in the middle or upper classes they do go on to complete them in order to affect their social standing—they complete them before a clergyman.

952. (*Lord Chelmsford.*) What means of knowledge have you upon that subject?——I have an experience as a country clergyman of 38 years in various parts of Scotland.

953. Are you able to say from your experience that you know of repeated instances of persons who have contracted irregular marriages going on to complete them?——I cannot call cases to mind. I speak from observing what is reported through the channels of public information.

954. Do you know of any instances yourself out of your own experience of 38 years of that description?——I cannot call any to mind just now, not being prepared to answer that question, but I believe that such is the fact. I have stated that those irregular marriages are chiefly amongst the lower classes. I say they are rare. They certainly are very rare among the higher classes, but are more common in the lower classes.

955. (*Dr. Twiss.*) Is it your impression that if the marriage *per verba de futuro, sequente copulâ* was not maintained as a formal marriage or as evidence of marriage, parties who are at present in the relation of sexual intercourse under a promise will not proceed to a regular marriage?——They do frequently proceed to what is called a regular marriage now by the existing law, that is, they go before the sheriff, declare that they are man and wife, and he gives them a certificate which entitles them to be registered as such. That is quite common.

956. Are there many such cases within your own knowledge?——Perfectly. I know it from the evidence of sheriffs who have told me.

957. (*Lord Chelmsford.*) What objection occurs to you to substituting the registrar for the sheriff in cases of that kind?——In all cases?

958. No, those particular cases?——As long as there is evidence I have no objection whatever to it. My impression is that the one will do as well as the other, supposing the registrar to be a respectable man. I suppose the sheriff has been selected from his position.

959. Considering the subject generally, what objection would there be in your mind to contracting these irregular marriages, as we will continue to call them, before the registrar, and then having a register or record made of the marriage?——As far as the parties are willing to avow themselves as married persons, undoubtedly the registrar may do just as well as the sheriff; but then, if they are to do that, they may as well make their marriage regular at once. Their object perhaps is to live together as man and wife without any idea that that connexion is recognized by the public. And we have many instances occurring in which parties have afterwards attempted to deny that they were man and wife. Now if you do away with that law, as I said before, you open the door to concubinage. If a man may live in open concubinage with a woman without having married her you open the door to a species of immorality which is very uncommon in Scotland. Parties who are willing at once to enter into the marriage tie may go to the sheriff, or to the registrar, or they may go to the parish clergyman, or any clergyman in the parish.

960. Your opinion is that parties are afraid of living in a state of concubinage for fear that it should result in establishing a marriage?——Precisely. At least one of the parties has that idea.

961. Might not that be an encouragement at least to one of the parties to live in a state of concubinage under the expectation that it would ultimately lead to the establishing of marriage?——I do not see that. Surely *à fortiori*, if the law did not bind them under those circumstances they would have less fear. If the present law were abolished there would be no check whatever.

962. Surely there is great opportunity given of converting concubinage into actual marriage, or proof of marriage, which might be an encouragement to persons living in that state?——It is legal marriage in the case I am putting.

963. No, not concubinage. My question was this whether it might not be an encouragement to concubinage in one of the parties, at least the expectation that that would eventually go to establish a marriage?——Certainly; by no means so strong an encouragement as if knowing that marriage could not result from the concubinage.

964. (*Dr. Twiss.*) But concubinage could not exist in Scotland where the woman took the name of the man?——If the man allowed her to have his name.

965. Then you are of opinion that the present law is favourable to the woman?——I do decidedly think so.

966. (*Mr. Walpole.*) Does it generally happen that where the parties have lived together by mutual consent as man and wife, that the gentleman tries to recede from that contract?——I believe we have recently had at least one case in which that attempt made considerable noise.

967. I will put the question in another way. Does it frequently happen in practice that the woman has to enforce that contract against the man?——I am not sure that that is common at all.

968. There would be means of furnishing a return of those cases where the woman has insisted on the marriage?——No doubt; if the man were disavowing the connexion the woman of course would do all in her power to establish it.

969. That is matter of probability and presumption; but what I want to know as matter of fact is is that taking place in Scotland, or not?——That is a fact which the records of the court would furnish better evidence of than I am prepared to do.

970. (*Lord Justice Clerk.*) You were acquainted with the bill which was introduced in 1849 by the late Lord Rutherford when he was Lord Advocate?——Yes.

71. I dare say you recollect that there was a d deal of opposition manifested to that measure Scotland?——Very great.

72. And a very strong feeling against it?——Yes, ch ultimately defeated the bill.

73. Do you suppose that there is any change since t time in the feeling of the people of Scotland n the subject?——I am not aware that there is any. lieve that there is no change.

74. How long is it since you ceased to be a parish gyman?——Eight years.

75. (*The Solicitor-General for Scotland.*) In an- r to Lord Chelmsford you more than once referred arties coming before the sheriff and being, as you ressed it, regularly married?——I understand that be the law, that two parties who have privately tracted marriage appear before the sheriff with nesses and declare that they are man and wife; he then gives a certificate, which is handed to registrar, and the marriage is registered and omes so far regular.

76. You stated that that happens frequently in tland?——I believe that has only recently in fact the case. Formerly, I believe, the law of Scot- l was that when parties who were irregularly ried went before a justice of the peace or a ma- rate, they declared themselves to be man and e, and he inflicted a penalty perhaps of a shilling n them as a punishment, and they could not be tried a second time for having contracted an gular marriage, which was punishable by the law of tland.

77. You said you were aware that that has fre- ntly happened, parties going before the sheriff, ough the information of some other sheriff. Who at?——For instance, the last one who gave me information was Sheriff Bell, of Glasgow.

78. Parties came before him?——Yes, and he then e them the requisite certificate to obtain the regis- ion of the marriage.

79. (*Lord Chelmsford.*) Is that under the new ?——I rather think there was some change made ead of going before a justice of the peace for rly the same purpose. I only know the fact from versation very recently on this subject from riff Bell. If there has been no change in the then they are just taking the sheriff instead of justice of the peace.

80. (*The Solicitor-General for Scotland.*) You k that the existing law tends to prevent concu- age by producing a dread on the part of the man, t if he lives in concubinage he may find himself ried?——Yes; and it prevents the woman from mitting to living in that state unless she is made elieve that she is his wife.

81. It makes him fear that he may find himself rried?——No doubt, in some cases.

82. And on the other hand it will induce her to e that she may find herself married?——Yes, and btain what she believed to be sufficient evidence he marriage.

83. If both parties intended marriage, what is the m of going before a registrar?——That is a matter feeling for them, but it is very possible that both parties did not intend marriage; that one of the ties may have been attempting to impose on the er—the man, to take advantage of the woman.

84. Do you think that is a prevalent case in Scot- d, that a man is attempting to take advantage of a man, and is very properly caught in marriage by existing law; is that a common case?——Not mmon. None of them are very common.

85. Have you known any case of it at all?——I only refer to the records of the court. They will w that.

986. You will excuse me for referring at this moment to your own experience and to your own knowledge. Is it according to your knowledge that any cases have occurred in Scotland within your experience and within the sphere of your observation, of the man intending to deceive the woman and being very properly punished, as I suppose you think he would be, by finding himself married?——I do not know that they have ever gone the length of being properly punished, but this is notorious in every parish of Scotland when cases of illegitimacy occur. I should say that in nine cases out of 10, when the parties are examined, the woman declares that it was on the faith of marriage, that she was deceived. I should say so, from my own experience as Moderator of a Kirk Session. Whether true or not I cannot vouch. Every woman is very glad to get any excuse she can for having fallen, but that is a common and almost a universal plea when they are subjected to discipline in ecclesiastical courts.

Rev. Principal Barclay, D.D.

5 May 1866.

987. That is not a case where the existing law operates beneficially apparently?——No; but it shows that a promise of marriage at all events is an inducement, and a man will, I think, be cautious how he gives that promise if he does not intend to fulfil it.

988. (*Mr. Walpole.*) Does not it also show this: that it is a matter of immense importance to the woman to have the fact of the marriage, consent having been given, registered as soon as possible?—— The fact of having it registered undoubtedly, but I do not know that she can register it without the consent of the husband. One of the parties, I believe, can hardly go successfully to the registrar.

989. Would you see any objection to either party having the power of insisting on the registration of the marriage within a given time of the consent?—— None whatever. I do not think there could be any reasonable objection to make it imperative on the parties to go and produce evidence before the magistrate or the registrar.

990. (*The Solicitor-General for Scotland.*) The best evidence would be to produce the other party who says that it is all right?——He may deny it.

991. You would not register it in that way?——Of course you could not register it. It might be a very legal marriage for all that.

992. If both parties are willing to be married, is there any reason why they should not go before the registrar if they object to go before a clergyman?—— I do not know. There may be reasons. People often wish to conceal their marriage for a time. At least I believe that is not uncommon.

993. (*Lord Chelmsford.*) Is it in your opinion a desirable thing to encourage the inclination on occasions to conceal marriages?——I would not as a general principle admit it, but there may be cases which perhaps require it. We have many instances of that in very high quarters.

994. Would you give us an instance in which you think it would be desirable that parties should be permitted by law to conceal their marriage?——I can give you instances in which parties have availed themselves of it where they should not have done so.

995. I want examples the other way. Can you furnish us with any examples in the contrary direction?——There may be a man who has good prospects which cannot ultimately be voided, but if it were known that he was married to a particular person, he might in the meantime be very much annoyed by those who had control over the property to which he hoped to succeed. I believe that is not uncommon.

996. Do you think that is a desirable state of things?——That is another question, and the answer must depend on the circumstances of the case.

Adjourned.

Wednesday, 9th May 1866.

PRESENT:

THE RIGHT HON. THE LORD CHELMSFORD.
THE RIGHT HON. THE LORD NAAS.
THE RIGHT HON. THE LORD LYVEDEN.
THE RIGHT HON. SPENCER HORATIO WALPOLE, Q.C., M.P.
THE RIGHT HON. WILLIAM MONSELL, M.P.
THE RIGHT HON. THE LORD JUSTICE CLERK OF SCOTLAND.
TRAVERS TWISS, ESQ., Q.C., D.C.L.
ALEXANDER MURRAY DUNLOP, ESQ., M.P.

LORD CHELMSFORD IN THE CHAIR.

P. Fraser, Esq., Advocate.

9 May 1866.

PATRICK FRASER, Esq., Advocate, examined.

997. (*Lord Chelmsford.*) You are, I believe, an advocate and sheriff of the county of Renfrew, and you are by Statute one of the members of the Board of Supervision in Scotland for the control of the poor?——I am.

998. We have received from Professor Moir a statement of the present law of Scotland, and we will not trouble you for any information in regard to it unless you wish to correct anything which Professor Moir has stated. Is there anything in this *précis* from which you dissent?——Yes, he says at the bottom of page 5, "The fourth mode of constituting marriage "which the law of Scotland recognizes is by co- "habitation of the parties, accompanied by the re- "putation of their being husband and wife." Now I do not understand it to be the law of Scotland, that that is a mode of constituting marriage. It is simply a rule of evidence from which (if the origin of the intercourse has not been proved to be illicit) a court of law will infer that consent had been given at a previous period; and in that respect the law of Scotland does not differ, I believe, from the law of any country except France, and the countries which have adopted the *Code Civil* of France. Even under the Code Civil, cohabitation and habit and repute are allowed as evidence to prove marriage in cases where the legitimacy of the children is involved. If the two parents who have lived publicly as husband and wife be dead, and a question arises as to the legitimacy of the children, then proof of cohabitation and habit and repute (by the 197th article of the *Code Civil*) is held to be sufficient proof that the parents have been married, provided the legitimacy be not contradicted by the registry of the birth. Toullier lays it down that the same rule would be applied if the parents, though living, were insane, and were therefore incapable of giving to their children information as to the place and manner of their marriage.

999. Perhaps you are also aware that in the law of England cohabitation as man and wife is evidence of a marriage in all cases except in cases which formerly used to be cases of *crim. con.*, and now cases in the Divorce Court and indictments for bigamy?——Yes.

1000. In all other cases cohabitation as husband and wife is evidence of the marriage?——Yes, I speak with hesitation in regard to the law of England; but unless I misunderstand that law, it seems to be the same in regard to this rule of evidence as the law of Scotland. There are cases to this effect in Sir George Lee's reports and elsewhere. (*Plunket* v. *Sharpe*, 1 *Lee* 441; *Bond* v. *Bond*, 2 *Lee* 45; *Diddear* v. *Faucit*, 3 *Phill.* 581; *Doe dem. Fleming*, 4 *Bing.* 266.) There is a very noted illustration of it in the case of *Piers* v. *Piers*, 2 *H. L. Cas.* 331, where there was no direct evidence of a marriage; but the House of Lords held cohabitation and owning for many years after the birth of children to be sufficient, from which they inferred that consent had been given to a regular marriage as averred. This rule either is (or was) also the law of Ireland; it having been held in several cases before the Act 7 & 8 Vict. c. 81. that evidence of cohabitation and public owning make sufficient proof of marriage, though no actual marriage be proved by a witness present at it. (Maxwell *v.* Maxwell, Millward's Eccl. Rep. 292; Legeyt *v.* O'Brien, Millw. p. 332; Else *v.* Else, Millw. p. 146.) Subsequent to these cases the Act 7 & 8 Vict. c. 41. was passed. It is titled "An Act for marriages in "Ireland, and for registering such marriages." I am not aware whether any different decisions have been pronounced since this Act passed. I should think not, looking to the terms of the 51st section which enacts "that if any valid marriage shall be had "under the provisions of this Act by means of any "wilfully false notice, certificate, or declaration made "by either party to such marriage as to any matter "to which a notice, certificate, or declaration is herein "required, it shall be lawful for Her Majesty's "Attorney-General or Solicitor-General for Ireland "to sue in the Court of Chancery or Court of Ex- "chequer in Ireland for a forfeiture of all estate and "interest in any property accruing to the offending "party by such marriage." It is not, however, declared that the omission of such notices or declarations will render the marriage null and leave the children bastards; nor do I see that the old presumption from cohabitation and owning is done away with by this Act of Parliament. In America the same rule holds although I find that the exceptions, which your Lordship states have been made in England, are there called in question in States which administer the common law of England. In a New Hampshire case, Parker, C. J., observed:—"Were not the "authorities so strong it might be questioned "whether this evidence of cohabitation and repu- "tation ought not to be admitted in cases of *crim.* "*con.* and in prosecutions for adultery and bigamy "for the simple reason that it has a legitimate ten- "dency to prove the fact. If larceny and robbery "and murder may be proved by circumstantial evi- "dence, the inquiry naturally arises why cases of "*crim. con.*, &c. may not be so also. It is very clear "that they may, except in the matter of proof of the "marriage. And it is not easy to perceive why a "exception should be made in favour of defendants "in such cases. If they have nothing better to rely "upon for a defence than the non-existence of a "marriage, they certainly could not complain of "being put to show it, after *primâ facie* evidence "had been adduced on the other side." *Young* v. *Foster*, 14 *N. H.* 114, 119. I do not pretend to offer an opinion as to whether the doubts here stated by Chief Justice Parker are well founded. I assume of course your Lordship's statement as to the law of England to be correct. In regard to the law of America, I may add that in the general statute of Massachussets, passed in the year 1841, the law has received legislative sanction in the following terms:—"When the fact of marriage is required to "offered to be proved before any court, evidence of "the admission of such fact by the party against "whom the process is instituted, or of general re- "pute, or of cohabitation as married persons, or any "other circumstantial or presumptive evidence from "which the fact may be inferred shall be competent." *Mass. Gen. Stat. c.* 106. *ss.* 22. I need not follow out this statement in regard to the law of other kingdoms. I am anxious to show the Commission that the Scottish rule of evidence is one recognized all the world over. Indeed the rule is one which is as old as the Code of the Roman Law (5, 4, 9), where it is set forth in the following terms: "Si vicinis vel alii "scientibus, uxorem liberorum procreandorum causâ "domi habuisti, et ex eo matrimonio filia suscepta "est; quamvis neque nuptiales tabulæ, neque alia "natam filiam pertinentes factæ sunt, non idcirco "minus veritas matrimonii, aut susceptæ filiæ, suam "habet protestatem." From the civil law the canon

aw borrowed the rule (*Decretal*, 22, 3, 11), and rom the canon law it was transplanted into the laws f modern nations. I have given this detail in order o show that there is no ground for the gross mis-tatement of the Scottish law which I have sometimes ead, to the effect that the rule is peculiar to Scotland, nd that two persons may be married in Scotland ithout knowing it. The Scottish law recognizes o marriage except consent be deliberately inter-hanged; and if it be admitted, or if it be the ecessary result from the proved facts of the case, iat consent was not interchanged, then no amount f cohabitation and habit and repute will be sufficient o make marriage according to the law of Scotland. hese two things in short only create a presumption, hich may be set aside, and the burden of proof shifted, pon the same ground as it is held to be shifted by oreign laws. It is held to be shifted in England if were proved that the woman with whom the man ved, and whom he had recognized as his wife, had een a prostitute. (*Curran* v. *Lowe*, 1 *Leigh Eccles. Rep.* p. 630.) In Ireland the presumption of a mar-iage by cohabitation was held to be removed by an dmission that the connexion had begun in illicit in-ercourse. (*Maxwell* v. *Maxwell*, *Mill. Eccles. Rep.* . 392.) In America the same judgment was delivered n a case, the rubric of which is as follows :—"Co-habitation known to be adulterous in its origin, a former wife being still alive, conveys no right to the guilty parties against third parties; nor does the continuance of such cohabitation after the death of the lawful wife afford legal presumption of a subsequent marriage. (*Cram* v. *Bunham*, 5 *Green-af's Reports of Supreme Judicial Court of Maine*, . 213.) This exception to the rule is also the law f Scotland as settled by two authoritative decisions of he House of Lords, by which it was held that if inter-ourse between a man and a woman is illicit in its rigin, cohabitation and habit and repute will not be ufficient to infer marriage, unless there be proof of hange in the character of the intercourse, that is to ay, proof of actual marriage. (*Cuningham* v. *Cun-ngham*; 2 *Dow.* p. 482; Lapsley *v.* Grierson, 19 Nov. 1845, 8 D.B.M. p. 34; and H. L. Cas., vol. 1, . 498.)

1001. (*Lord Chelmsford.*) Will you be good enough o explain what are clandestine marriages according to he law of Scotland?——Upon that subject Professor Ioir has said nothing in the statement he has given o the Commission. He has told you what are public egular marriages. He is quite correct in that state-ient of the law; and then he says that marriage may e constituted in three other ways, one being co-abitation and habit and repute (in regard to which have just expressed my opinion); the two others eing consent *de presenti* and promise *subsequente opulâ*. Now none of these are clandestine or in-rderly marriages according to the Law of Scotland. We have besides these two modes of marriage by *onsent de presenti* and *promise subsequente copulâ*, nother distinct class of marriages, which alone are landestine and inorderly marriages. The law on the ubject of clandestine marriages has been greatly odified during the last two centuries. There were number of marriages which were regarded as clan-lestine and inorderly down to the close of the 17th entury, which are not so regarded now. The number is ow practically limited to two; prosecutions in regard o all others being unknown in modern times. The wo cases which are at present considered as offences, nd punishable under the Acts, are; *first*, where a man ssumes the character of a clergyman, and so is an mpostor, and pretends as a clergyman to celebrate marriage. He is liable to the pains and penalties ttached to the celebrator of a clandestine marriage.

1002. (*Lord Justice Clerk.*) And the parties also?——And the parties also, if they know his character; and *secondly*, where a clergyman or any other person elebrates a marriage, there being no banns proclaimed eforehand. Against those two and those alone the tatutes directed against clandestine marriages can now be, or are now, at this day, applied. Consent *de presenti* is not, according to the law of Scotland, a clandestine marriage; nor is promise *subsequente copulâ*. It is quite true that by the judgment in *Dalrymple* (2 Hag. Con. Rep.), and in the subsequent case of McAdam *v.* Walker in the House of Lords, consent *de presenti* was elevated to the position of marriage. But the statutes were not directed against these precontracts; they were directed against those inorderly and clandestine marriages, that I have described and others which I will presently mention. So far from *sponsalia de presenti* being an object of reprobation by the law, this precontract (for until the decision in McAdam *v.* Walker it was nothing more) was solemnly enjoined by the Church; it was sanctioned by the law; and the Scottish Provincial Councils anterior to the Reformation made regulations for *sponsalia de presenti* being entered into in church before the priest, and before a certain number of witnesses. These canons of Provincial Councils were not altered at the Reformation, and are the law of Scotland at this hour, except in two particulars, viz., divorce *a vinculo* is now allowed, and the prohibited degrees are restricted to narrower bounds. In these canons which have such minute regulations for the celebration of *sponsalia*, there are canons directed against clandestine marriages, which were treated as a wholly different thing from the *sponsalia*, which were enjoined as a lawful and becoming thing to be entered into before marriage.

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1003. We have heard that a practice formerly prevailed—I do not know whether it does now,—of parties who had contracted what were called irregular marriages getting a friendly complaint made before the justices, and then they were fined, and an entry was made of that proceeding; does that apply to all irregular marriages, or is it confined entirely to clandestine marriages?——Where, subsequently to the judgment in the case of Dalrymple, and the case of McAdam, parties had interchanged consent *de presenti*, which was made marriage by those decisions, the parties wished to preserve a record of it, it became the practice for the parties to go before a justice of the peace, to whom there was presented a pretended complaint by the procurator fiscal, and they were fined a small sum, and then they got an extract of the judgment which they wanted as a kind of judicial evidence of their marriage. That judicial farce was gone through subsequent to the case of Dalrymple in cases where there were mutual interchanges of *de presenti* consent, and nothing more. I believe the practice began even before the decision in Darymple. I have seen the papers in such proceedings which took place at the beginning of this century. I have not heard of any such practice for the last 20 years. I do not think that any prosecution of this kind has occurred in Scotland during that period. The practice only existed in three or four places in Scotland, Annan, Dumfries, Rutherglen, and the Canongate of Edinburgh. It got so disreputable that it gradually died out.

1004. But then they must have been regarded as an offence?——They were regarded as an offence; but then regarded as an offence by whom? By the country magistrate, and by the procurator fiscal, who got his fees from it. The Supreme Courts of Scotland have never endorsed these practices of provincial magistrates. Every one of these prosecutions was a collusive transaction got up between the fiscal, who obtained his fees, and the parties who wished to procure and preserve a quasi-judicial record of their matrimonial contract. It was a mode whereby in a kind of formal way they preserved evidence of the marriage. I have not however finished what I intended to say in reference to what marriages were clandestine, and against which the penal statutes forbidding them were directed. There were no less than eight cases of clandestine marriage, only two of which now survive; *first*, a marriage celebrated by an episcopal minister when presbytery was the established religion; this prohibition of marriage by an Episcopalian clergyman,

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during the dominancy of presbytery, continued till the passing of the Toleration Act, 10 Anne, c. 7, by which (§ 5) episcopal clergymen were allowed to celebrate marriage. *Secondly*, a marriage celebrated by a Presbyterian minister when episcopacy was the established religion; that was between 1661 and 1690; *thirdly*, a marriage celebrated by a Popish priest, or by any clergyman dissenting from the Established Church (other than Episcopalians). This law continued in force down to the year 1834, when an Act was passed (4 & 5 Will. 4. c. 28.) authorizing any clergyman to celebrate marriage; *fourthly*, a marriage celebrated without proclamation of banns or by one who is not a minister of religion; *fifthly*, a marriage celebrated on any day other than Sunday; *sixthly*, a marriage not celebrated in church; *seventhly*, a marriage celebrated by Scottish people elsewhere than in Scotland, they having gone to England or other foreign parts merely to marry; and, *eighthly*, marriages without the consent of parents. The first four of these and the seventh have been declared clandestine by statute. The others rest upon ecclesiastical regulation or legislation. With regard to celebration of marriage in a church, the regulation requiring it was first promulgated by a provincial council which met at Edinburgh in 1242. This rule was continued by the Church at the Reformation in 1560. The first Book of Discipline, published in 1560, required marriages to be in church and on a Sunday. In the year 1570 the General Assembly enacted that marriages must be celebrated in church in the face of the congregation. In 1581 the enactment was renewed (*Book of the Universal Kirk*, p. 525; *Row's History*, p. 87), and a clergyman was deposed from his office in 1587 for celebrating marriage *intra privatos parietes* (*Book, Universal Kirk*, p. 695). The practice of marrying in church continued to the beginning of the 18th century. (*Selections from Ecclesiastical Records, Spalding Club Publications*, p. 65.) It was after that discontinued, and is not now the practice in Scotland. The celebration without the consent of parents was regarded as clandestine. Such consent was required by the first Book of Discipline, and this rule was enforced by the Ecclesiastical Courts (*Book, Universal Kirk*, pp. 61, 74, 775.) It was regarded as an essential requisite in the rescinded Act of 1649, c. 47 (6 *Thomson's Acts*, p. 369), and by Lord Dirleton, who was a very learned judge, and was for a long time a judge in our Consistorial Court. (*Dirleton* v. *Marriage Clandestine.*)

1005. (*Lord Chelmsford.*) With regard to the consent of parents, there is no necessity now for any consent after the ages of 14 and 12?——None whatever; these eight cases were all clandestine and inorderly marriages. But although the parties and celebrator were punished, the connexions were still *marriages*. In the whole course of Scottish legislation, there is not an instance of a law annulling the marriage and bastardising the issue merely because the public and prescribed formalities had not been observed. The law has ever been, and I trust ever will be, to leave the marriages alone, and merely to punish the man and woman by imprisonment and fines. In regard to marriages by Scottish people in England and other foreign countries, the history is this: a petition was presented by the General Assembly to Parliament in the year 1639 (that petition is printed in Thomson's edition of the Acts), praying Parliament to enact that no person should be allowed to be married except in Scotland, if they had their ordinary residence there; and Parliament accordingly in the year 1641 passed an Act of Parliament in the following terms:—"Our Sovereign Lord and the "estates of this present Parliament, considering the "great abuse and dangerous evil that has followed "and may follow upon frequent marriages of persons "inhabitants within this kingdom going to the neighbouring kingdoms for getting themselves married "there, which they could not obtain in this kingdom "by the laws and constitutions thereof, therefore for "the remedy of that evil and for preventing such in "time coming, prohibits and discharges all men a[nd] "women having both their ordinary residence with[in] "this kingdom to get marriage to themselves w[ith] "others within the kingdom of England or Irelan[d] "without proclamation of banns here in Scotland a[nd] "against the order and constitution of this kingdom "under the pains following;" and then follow pecuniary and corporal pains. That Act of Parliament does not seem to have been followed out in practice. The discipline of the Scotch Church against immoral proceedings was very severe; and no minister would marry any man who was the father of an illegitimate child, or who was suspected of it, until he submitted to the discipline of the church; nor would he celebrate a marriage between persons who did not attend church, or were suspected of nonconformity to the church; and the unhappy people had to flee to England, and get married there. I find this entry in the record of the synod of Fife, in the year 1671, when Sharp was Archbishop of St. Andrews:—"The Lord "Archbishop and synod being informed that some per"sons go to the border and marry there, contemning "the authority of the church, judge that they should "be dilated to the civil magistrate, that they may be "fined according to law, and that they be put to a "public declaration of their repentance and be sus"pended from the sacrament for violating the order "of the Church." The person who acted as celebrator on the English side of the border was, for a number of years, a minister at Cornwall, which is a place on the banks of the Tweed, on the English side. There is an entry in one of the ecclesiastical records in these terms:—"Conform to citation compeared John "Chaip, who being asked wherefore he holds Beatrix "Kydd in his society and household? *answered*, that, "she is his married wife, and that he has a testimonial "of the minister of Cornwall to testify the same, "which he produced before the session, which scarce "could be well read, subscribed by John Fairbairn, "minister at the said kirk. It was replied to him "that his marriage was not orderly proceeded, and "therefore is null, therefore he is ordained to separate "the said woman forth of his house and society untill "he have fulfilled that which the presbytery the "morrow shall enjoin him to do." It is the law of Scotland at the present day, that if any Scotch people go to England and marry without having their banns proclaimed in Scotland, they commit an offence against the law, and are liable to punishment under the Acts directed against clandestine marriages. But although the law is daily violated, there is no instance of a modern prosecution for entering into a clandestine marriage by marrying in England without previous proclamation of banns in Scotland.

1006. (*Lord Justice Clerk.*) Is not that one of the rescinded Acts?——Yes; the Act of 1641 was rescinded, but it is re-enacted by the Act of 1661. Your Lordship will find an express re-enactment of the provision in that Act which is now the law against clandestine and inorderly marriages.

1007. That re-enacts the Act of 1641 against clandestine marriages celebrated by persons not in orders or without proclamation of banns, but does it go any further?——It goes further. The Act of 1661 says, "Like as His Majesty with advice aforesaid prohibits "and discharges all men and women having both "their ordinary residence within this kingdom, to get "marriage to themselves with others, within the "kingdom of England or Ireland without proclama"tion of banns here in Scotland." I may venture here, as the Lord Justice Clerk is present, to mention a case in the report of which will be found the only exposition that I know, of the history of the Acts regarding clandestine marriage. It was a case in the Court of Justiciary—a recent case of Ballantyne, in the third volume of Irvine's Reports. There is in that case one remark made by the Lord Justice Clerk in these terms:—"It has indeed been said that according to "the feelings and the language of the 17th century, "every one who was not a member of the Established "Church was a layman; and Jesuits and priests are

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...therwise distinguished than as representing the ...most objectionable sort of laymen." I venture ...mbly to differ from that statement, because, although ... were heavy penalties attached to the exercise of ...ir ecclesiastical functions by these deposed Jesuit ... or nonconforming ministers, nobody ever ... to touch their character as priests; and ...ir marriages, although considered irregular and in...erly, were still held to be marriages by a priest. ...e ecclesiastical character, for example, of Principal ...llie, of Robert Blair, David Dickson, and other ...sbyterian clergymen was recognized after episco...y was established; and all the other ousted ministers ...o were driven from their parishes during the régime ...episcopacy were still recognized as clergymen en...ed to administer what is called in Scotland, sealing ...inances. They were allowed to celebrate marriage, ...ough it was an inorderly proceeding. The result ... the whole matter is this, that at the present ...ment we have in Scotland, 1st, a public regular ...riage enjoined and sanctioned by the law. We ...e, 2ndly, clandestine and inorderly marriages, the ...ering into which is a punishable offence; and we ...e, 3rdly, two other modes whereby marriage may ... made, viz., *consent de presenti* and promise *cum ...ulâ*, the two latter, however, not being punishable ...clandestine marriages.

1008. (*Lord Chelmsford.*) But notwithstanding these ...er marriages are not punishable, yet there has been ... practice prevailing which I have adverted to of ...ir going before the justice, having a complaint laid, ... being fined, and a record of the fine being made?—That is quite true; but I again repeat that there ...o judgment by any of the Supreme Courts recog...ing these practices of the provincial magistrates; ...an indication of what the law was, they are utterly ...rthless. I will now state my views as to promises ...*n copulâ*, according to the law of Scotland. The first ...ark I beg to make is, that promise *cum copulâ* does ... *constitute* marriage; promise *cum copulâ* consti...es simply a pre-contract, which by due form of ...ocess may be made marriage; but if either of the ...rties dies before solemnization, or before there ... been a decree of a court of law declaring the ...rriage (that is the modern form of action), then the ...rviving woman would not get the rights of widow; ... would not get *jus relictæ*, which is her share of ... moveable estate; nor would she get terce; and ... like manner the surviving man would not get ...rtesy.

1009. Then, in point of fact, there is only one kind ... what we may call irregular marriage, as dis...guished from clandestine marriages, that is, con...act *per verba de presenti?*—Just so; there is no ...her.

1010. (*Lord Justice Clerk.*) With regard to the ...ctrine as to the effect of the promise *cum copulâ*, ... that been the subject of express judgment?—... shall state the law on this matter as I understand ... I trace the whole of the error which exists in ...gard to promise *cum copulâ* to the inaccurate words ... Lord Stair under the title of "Marriage." He ...ates the law more clearly and more distinctly after...ards when he is speaking of succession, and when ... comes to state what children are lawful children. ...he following propositions I extract from the cases: ...t. Promises, or *sponsalia de futuro* followed by ... are never called in any decision previous to ... time, marriage. 2ndly. When *sponsalia de ...turo cum copulâ* have been entered into, an action ...as resorted to in the Consistorial Court, which was ... court separate and distinct from the Court of ...ssion, by either spouse to compel the other to com...ete the bond of matrimony by solemnization. ...dly. To such an action defences were relevant which ...uld not have been pleaded if the connexion had ...nstituted matrimony; such as irreconcileable en...ity and the incontinency of either of the parties ...ter the promise had been given, and after the *copula* ...d taken place. In one case a woman brought an ...tion against a man to compel him to complete the bond of matrimony by solemnization, because he had promised marriage to her and *copula* had followed. The defence was this:—"You, the pursuer, have had "connexion with a third party since the constitution "of this pre-contract;" and the Consistorial Court held that to be a relevant defence against the action, and allowed proof of it. 4thly. If either party died before judicial decree, or at least before litiscontestation, the bond of matrimony was not formed, and the survivor had not the rights of a widower or a widow. In particular the woman was not entitled to terce, nor the man to courtesy, until solemnization or decree. Nor (5thly) had the man or woman while in life the civil rights of husband and wife in each other's property. The *jus mariti*, for example, could not be enforced against the wife. 6thly. The children were not legitimate. There is no express judgment to this effect; but two judgments have been pronounced which imply it. One of these is reported by Craig. I cannot find it in the Commissary Records; they are very confused; but Craig states it quite distinctly. A question had arisen in regard to the legitimacy of the children of a man called Edward Younger. It was said they were legitimate, because their father and mother had promised marriage to each other, and had connexion, and they were the offspring of that connexion, and that an action had been, during the lifetime of both parents, brought in the Commissary Court, and a decree made by the Commissaries, ordering them to solemnize their marriage. The legitimacy is rested expressly on the decree, which was held equivalent to solemnization. So in another case, of *Wauchope* v. *Sandilands*, a question arose as to the right of children to participate in the succession of their father. There, also there had been a decree at the woman's instance, ordering the man to "complete the bond of matrimony" with her, and the judgment was that in respect that these promises and the *copula* had been followed up by this decree, the children were legitimate, and were therefore entitled to succeed. 7thly. The presumption does not hold that all the children born of the woman are the issue of the man, according to the rule that holds in marriage, that children are the issue of persons *quem nuptiæ demonstrant*. 8thly. If either party entered into a marriage regularly with another party, and that marriage were not annulled by decree of the Consistorial Court, and at the same time a decree ordaining solemnization of the marriage between the parties who had given prior promises and *copula*, the subsequent regular marriage was valid to all purposes, and could not after the death of either of the parties to the promises be annulled.

1011. (*Lord Chelmsford.*) I think the text writers generally call this *marriage*,—the promise *sequente copulâ*; they always treat that as a marriage, do they not? I am not asking as to your own book at present, I do not know how it is treated there, but I think Erskine treats it so?—Erskine so states it; and he was a very learned lawyer and a very able man, but at the time he wrote, there were few reported cases on the subject, and it had undergone very little general discussion. He was a professor in the University of Edinburgh and never practised in the Consistorial Court. While admitting that he is one of the clearest and best legal writers we have, I venture humbly to say that his law here is erroneous. He was misled by deducing from one decision of the Court of Session, a doctrine which the decision did not warrant. The decision merely found that if two parties interchange promises, and *copula* follows, and either of the parties afterwards enters into a regular marriage *in facie ecclesiæ*, the subsequent regular marriage is no bar to an action against the man to compel him to solemnize the first pre-contract; in short, the first pre-contract by promise *cum copulâ*, if duly declared during the lifetime of the two persons, annuls a subsequent marriage. As I understand the law of England, the same effect was given to a pre-contract in England, and the law to this effect was only changed by the 13th section of Lord Hardwicke's Act. I refer the

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Commission to Lord Lyndhurst's judgment in the case of the Queen *v.* Millis, which in my opinion is a correct exposition of the law of Scotland upon this subject. His lordship shows that it was the law of England that the pre-contract (for it was nothing more than a pre-contract) of *sponsalia de presenti*, or promises *subsequente copulâ*, annuls a subsequent regular marriage. It was a decision to that effect which Erskine had before him when he was writing the law of Scotland as to the effect of promises *cum copulâ*, and because the pre-contract barred subsequent marriage, he erroneously deduced from that, that the promise and *copula* was *verum matrimonium* to all intents and purposes whatever. In regard to Lord Stair, he treats of this matter in two places. First, in a passage which is well known under the head of "Conjugal Obligations," at the beginning of his book ; *secondly*, in a passage which is not so well known, when he treats of "Succession," and in that subsequent passage he states the law as I have done it. Stair first lays it down that "after contract or promise of marriage or *sponsalia*, "if copulation follow, there is thence presumed a "matrimonial consent *de presenti*, which therefore "cannot be passed from by either or both parties "as having the essential requisites of marriage." Here Stair does not call it marriage ; but he says that it possesses the essential requisite of marriage, that the contract, whatever it was, is not dissoluble at the will of either or both of the parties. He then goes on to state in what manner it could be made marriage, and these are his words (Stair, book 3, title 3, section 42), "If diligence be used for perform- "ing that solemnity," (diligence there, means if an action at law be raised,) "though it take no effect, "the contract of marriage will make the child lawful, "as when in the time of proclamation thereof the one "party died, whereof Craig (II., 18, 19) relateth a "case ; yea, in the case of Edward Younger there "mentioned, who having begotten children under "promise of marriage, but refusing to acknowledge "or perform it, the woman, *having obtained sentence "of the commissars* (who are judges of matrimony "and legitimation) against the said Edward for "solemnizing the marriage, which though he obeyed "not, the children were accounted lawful and capable "of succession." Therefore, so far from Lord Stair's authority being citeable for the doctrine, that promise *subsequente copula* makes marriage of itself, I say that that authority is the other way.

1012. Does it appear how that case of Younger was proved, whether by writing or by the oath of the party ?——I cannot ascertain that, because I cannot trace the case in the commissary records. There are about 200 manuscript volumes and the handwriting changes every ten years, and I cannot trace it.

1013. You have treated of this subject, I suppose, in your book ?——Yes.

1014. Will you give us a reference to the pages ?——I would scarcely like to be held as being bound by a book which was written to occupy the tedium of my first three years of unemployed professional life at the bar, although the references in the book are, I think, correct. I cannot be held bound by all the opinions in that book. The subject is treated of at page 164 of the first volume.

1015. (*Lord Justice Clerk.*) With regard to those kinds of clandestine marriage which you mentioned, eight in number, that existed at one time, were any of them considered as invalid by the civil law ?——Never.

1016. Never at any time ?——Never ; not even in Roman Catholic times. Our law has gone on this principle and this alone: "We will sanction and "enjoin certain solemnities as proper to be observed "in the constitution of this solemn contract ; but we "will enforce that, only by imposing penalties upon "the people who neglect such solemnities."

1017. With regard to the first three that you mentioned, where the clergyman was not a clergyman of the Established Church for the time, that was enjoined by the civil law, I presume ?——It was.

1018. As to the marrying elsewhere than in church upon what authority did that stand ?——The General Assembly.

1019. And so as to the marriage without consent of parents ?——Yes ; the General Assembly.

1020. That stood upon ecclesiastical ordinance ?——Yes. I may state this in reference to the question which your Lordship has put to me, that I find that the ecclesiastical assemblies of Scotland, more especially the Presbyterian assemblies, came to the civil court, the consistorial court, which was then composed of lawyers, and beseeched the judges to find marriages celebrated by non-conforming priests to be null ; but the commissaries never did this (*Book, Universal Kirk, p.* 855). On one occasion application was made to Regent Morton in order to get him to induce Parliament to pass an Act to hold them to be null ; but Parliament gave the application no encouragement, and therefore marriages by non-conforming priests remained simply in the category of forbidden things to be punished by penalties.

1021. (*Lord Justice Clerk.*) You are now speaking of the early times of the Reformation, shortly after the Reformation ?——Yes ; but these attempts at legislation came further down, after the Assembly of 1638. Of course the reference to Morton was in the early period.

1022. That is the reason I put the question, because I believe the attempts to influence the commissaries in the way you have mentioned come down pretty late in the 17th century ?——Yes.

1023. You mentioned something about the law of England as regards the doctrine of cohabitation and repute. Can you tell us in a few words what is the difference between the law of England and of Scotland on that point ?——I speak of course with great diffidence about the law of England ; but, if I do not misunderstand it entirely, I can find no difference whatever between the laws of the two countries. There seems to be a notion afloat that the law of Scotland tolerates this, that a man, by living for 20 years with a woman and recognizing her as his wife, going to church with her and sitting at table with her, where he speaks to her and treats her as his wife, he will thereby by these proceedings gradually slide into marriage with her. Now, there is not the slightest countenance for that notion in our law. If it be admitted that there never was the deliberate interchange of matrimonial consent, or if it be inferred from the proved facts of a case that there was no such interchange of matrimonial consent, the length of cohabitation and repute is of no moment, and marriage will not be inferred therefrom.

1024. (*Lord Chelmsford.*) There is this little distinction between the law of England and of Scotland. I apprehend that habit and repute in Scotland is evidence of a marriage in all cases. Now cohabitation as man and wife in England is not evidence, in all cases, of a marriage. In cases of indictment for bigamy you would be obliged to prove a marriage in fact ; so in the action I adverted to of *crim. con.* there you must prove the marriage in fact, and living together as man and wife would not be sufficient. That is probably the only distinction between the law of the two countries, it merely being evidence of the marriage, only that evidence is not admissible in England in some cases. That is the distinction ?——Will you allow me to call your attention to a book written by an American lawyer, "Bishop's Law of Marriage and Divorce," vol. i. p. 283, where your Lordship will find that doctrine of the English law questioned (I have no doubt it is as your Lordship mentioned it), namely, that it is not evidence in actions of *crim. con.* and of indictments for bigamy. He examines the case of Morris *v.* Walker.

1025. That is considered to be as well settled as possible ?——He is speaking of it from an American point of view.

1026. Morris *v.* Walker, I think, was before Lord Kenyon ?——Yes. With us cohabitation and habit and repute is the same as it exists in America, as stated by this gentleman, and except in those two cases it is the same as it is in England.

1027. (*Lord Justice Clerk.*) In short cohabitation with repute, however long continued, creates a presumption which may be redargued ?——Just so.

1028. It is not a *presumptio juris et de jure* ?——No. It places the onus on the side averring no marriage, but that is all. The onus may be shifted as I have already stated. I do hope that no recommendation will be given by this Commission to change that rule of evidence, otherwise it would work most extraordinary hardships. A man comes from Asia or America and brings with him a woman whom he calls and treats as his wife, and children whom he recognizes as his legitimate children. They live together for 20 or 30 years, and then he dies. Is that woman to be obliged to go away to those foreign countries and bring evidence of her marriage ?

1029. (*Lord Chelmsford.*) But who has suggested that there should be any such alteration ?——Has it not been suggested ? The inaccurate language which has often been applied to this rule of the law of Scotland (a rule no ways peculiar to Scotland) indicates that there are very loose notions afloat upon the subject, and that there are people who wish a hard marriage law, — a law which would allow no evidence of a marriage, except a public register.

1030. I think you are rather setting up a shadow and combating it ?——I am merely expressing a hope that the notion may never enter into the minds of the members of this Commission, which has occupied the leisure of many writers, who have covered many pages with ignorant denunciations of the Scottish marriage law on this very matter.

1031. I want to know something with regard to the registration of marriages in Scotland ; what is the registration which exists at the present time ?——At the present time that is enforced by penalties. I understood that the secretary of the Registrar General had been examined before you, and that he would have given you all information about that, and I speak rather from vague recollection on the subject.

1032. If you do not feel competent to give an answer, I will not trouble you upon it.——I cannot, except to state generally that the regulation is enforced by imposing penalties for its neglect ; but the marriage, though not registered, is valid.

1033. I really do not recollect whether there is any law enforcing the registration of irregular marriages in Scotland ; is there any ?——None. The Act 19 & 20 Vict. c. 96. which abolished Gretna Green marriages, provides a mode for getting it done. On application to the sheriff by both the man and woman, a warrant may be obtained upon the registrar to register an irregular marriage.

1034. Do you not think it would be very desirable that that should be enforced ? I do not say what the consequences of non-registration might be. Do you not think it would be desirable that a registration of all marriages should in some way or other be prescribed ?——The enforcement of the registration of every kind of marriage would be a wholesome reform, provided you enforced it only by the imposition of penalties for its neglect. You have only two courses open, as it appears to me, either to require the registration of these marriages under the pain of absolute nullity and the consequent bastardising of the children, or to enforce them by imposing penalties upon the parties. There would be no difficulty, and perhaps no hardship in attaching absolute nullity to non-registration, if you had simply the interests of the husband and wife to look to ; but where you have to deal with innocent children (who have been brought up perhaps for many years as legitimate children) and whose status is challenged,—it may be after the parents' death,—on the ground of some error in the registration, other considerations come into play, which must make one pause, before adopting a law which would impose the dreadful penalty of bastardy upon these children for their parents' neglect, or even for their parents' fraud. Suppose, for example, an error in the name of one of the parties, either in the register or in the public notice required to be given of a marriage, and we can get illustrations from decided cases of this from the law of England. I will give you examples of the working of the English marriage law under Lord Hardwicke's Act in regard to this matter. In one case the man's name was "Augustus Henry Edward Stanhope," but the banns were proclaimed under the name of Edward Stanhope only. The marriage was held null. In another case the banns were published in the name of William Pouget, whereas, the man's name was William Peter Pouget. The marriage was declared null by Sir William Scott. In another case the same learned Judge declared a marriage to be null where the man's name was Meddowcroft and the banns were proclaimed under the name of Weddowcroft. The Act 4 Geo. 4. c. 76. s. 22, modified Lord Hardwicke's Act to some extent, as explained by the decisions upon it ; these decisions requiring that *both* parties must have been cognizant of the imperfect proclamation of banns, in order to render the marriage invalid. But even under this Act very startling decisions have been given. In one case the man's name was Robert Charles Read : the proclamation of banns was in the name of Robert Reed, and Dr. Lushington held the marriage to be null. In a later case it appeared that the man's name was Bower Wood; the proclamation was in the name of John Wood, and Sir C. Cresswell held the marriage invalid.

1035. What are those cases ?——They are reported as follows:—Stanhope *v.* Baldwin 1 Adams, 93 ; Pouget *v.* Tomkins, 2 Hagg, C. R., 142 ; Meddowcroft *v.* Gregory, 2 Hagg, C. R. 213 ; Brealy *v.* Read, 2 Curt. 833 ; Midgely *v.* Wood, 30 L. I Mat., cas. 57.

1036. Did it appear that the wrong name was given for the purposes of concealment ?——In one case the woman was entirely innocent. She did not know the real name ; but the man of course knew. I admit that under the benignant construction given to the 22nd section of 4 Geo. 4. c. 76. such errors will not be fatal unless both parties know of them.

1037. Did he do it for the purpose of concealment ? ——He did, but she was not aware of it.

(*Lord Lyvedon.*) In the case of Stanhope, the man seems to have given one of his names and his surname, which was a pretty good indication of who he was.

1038. (*Lord Chelmsford.*) A man may have several Christian names, and only use one ?——I can perfectly understand that where parties agree that their banns shall be published under false names, for the purpose of concealing the fact of the marriage being about to take place from persons interested in preventing it, then the marriage would be void, but I cannot understand that it would be so where a person has several Christian names and the banns publish only one ?—In justice to the English Consistorial Courts I may mention this ; that an error in the name in a special licence has not been held as in any way to annul the marriage, even although the object was to conceal the real name ; (Cope *v.* Burt, 1 Hagaard, Consistorial Reports, p. 139, confirmed on appeal 1 Phillimore, p. 224), the distinction drawn between the two classes of cases being this; the surrogate or the other officer who gives the licence must satisfy himself as to the age and residence of the parties, and all other particulars. In the case of the proclamation of banns, again, the object is to inform the public, and if there be an error in the name, then the proclamation has failed of its purpose. The question then comes to this; are you to establish a law which shall require, as they do in France, a notice to be put on the walls of the town council chambers, or advertisements in the newspapers for ten days; also, perhaps a proclamation in church for ten days; and if there be an error in the name, or if the full ten days notice has not been given, but merely nine days notice, is the unfortunate woman to be held (25 years afterwards) not to be, nor to have been, a wife, but merely a concubine, and her children bastards ?

1039. If that case were to come before me I probably should know how to decide it ; but I must decline to enter into the consideration of such a case. I do not believe anybody would contend that even if previous notice or subsequent registration is required, and if there is any error either in the notice or the

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registration, that the marriage should be rendered void. The question merely is as to requiring notice and as to requiring registration, whether it is not possible that that course should be adopted ?——If you confined it merely to the imposition of penalties for non-registration it would not create the storm of rebellion that anything else would do in Scotland ; for we have got so accustomed to our present law, and it works so well, that we could not tolerate any law like that of France, or the going beyond penalties.

1040. (*Lord Justice Clerk.*) With regard to enforcing the registration of irregular marriages by a pecuniary penalty, have you at all considered how that could be carried out in detail as applicable to the different kinds of irregular marriages ?——I think it would be practically difficult to work it, although I am for trying it. If you put upon a public prosecutor the duty of proving that two parties have entered into marriage, who have a motive or desire to conceal the fact, how can he prove it ? No doubt he may bring them forward themselves, and if you make them competent witnesses under the pains of perjury he may get evidence from themselves that they are married. If he finds them for example living together apparently as husband and wife, the presumption is that they are so ; but how can the procurator fiscal prove it in the face of their denial. On the other hand, if a man has entered into the pre-contract of promises *cum copula*, he may not be living with the woman at all, as is generally the case, and a prosecution in such a case would fail if the parties wish to conceal their real position. Then it would be absurd to register in a register of marriages, as a marriage, a connexion which is not a marriage, but merely a pre-contract. I admit the hardship of the rule which gives to such a latent pre-contract the effect of annulling a subsequent public marriage of one of the parties with a third person. I would allow the law as to promises *cum copula* to remain unaltered except as to this rule. But it would be right to abolish this rule if the third person had no knowledge of the pre-contract.

1041. (*Lord Chelmsford.*) It may be cohabitation merely, not what is called habit and repute ?——That is a very uncommon thing in Scotland. I do not know one single case of cohabitation without a repute, or at all events it is a very singular case.

1042. (*Lord Justice Clerk.*) In the case of cohabitation there must be a repute one way or the other if the cohabitation is open ?——Of course.

1043. There would be either a repute of marriage or a reputed concubinage ?——Yes. I do not know from what cause it is, but there really is no case of repute of concubinage in any of our Scottish parishes. I am not aware of having heard of such a thing.

1044. Is that because of the infrequency of concubinage ?——It is unknown in Scotland. No man can introduce into society in Scotland his mistress as his *wife*, without raising up an awkward presumption that she is his wife ; and public opinion is set so strongly against open concubinage that no man would venture to live openly with a woman who was his avowed mistress. I may call your attention to a case in point. Here is a witness under examination. He brings his mistress from England with him down to Stirling, and there he takes two bedrooms. He says :—"We," that is he and his mistress, "had had some misunderstanding before starting. "On our arrival I had ordered a room and *two* bed-"rooms. My reason for having separate rooms was, "that I was more particular in Scotland, so that "there might be no doubt of the nature of the con-"nexion between us. She was annoyed at my having "gone to her room while she was dressing, since we "had taken separate rooms ; and she told me the "landlady had spoken to her on the subject."

1045. (*Lord Chelmsford.*) Do not you think it desirable that there should be a registration of these irregular marriages. It is always desirable, is it not, to have proof of marriage when it has taken place, and the best proof ?——I think it a desirable object, because I think that clandestinity and secrecy ought to be put an end to as much as you possibly can, keeping in view the interests of children ; but then I see great difficulties in prosecuting for its neglect, though this need not deter us from trying what can be done.

1046. The only way to work it is to say that the consent *per verba de presenti* shall not constitute marriage unless there is a subsequent registration ?——That is just the kind of law against which I have been speaking, and against which I earnestly protest.

1047. These marriages we hear are so very uncommon that I am at a loss to understand what feeling there can be against the proposal of requiring that there should be a registration of them in order to complete the marriage ?——Do not misunderstand me. I do not believe that any Scotsman objects to a law requiring an irregular marriage to be registered. This would include *sponsalia de presenti*, which, by the decision in the case of McAdam, have been raised up from the position of a pre-contract to be very marriage. But it would not include *sponsalia de futuro cum copula*,—that is promises *cum copula*, —because that is not marriage. I would not allow or require this latter connexion to be registered ; and if you alter the law as I have suggested so as to take away from it the power of annulling a second regular marriage, the law of promise *cum coplua* otherwise would prove a sound and humane law. The objection to a law attaching nullity to non-registration I have already stated. I need not repeat what I have said. Such a law would prevent, for example, an unfortunate girl who has been seduced by some scoundrel from asserting her rights. He has given promise of marriage and then *copula* has followed. Satiety has produced disgust on his part, and he will not fulfil his promise, and he will not go to the registrar to get it recorded, supposing such a pre-contract shall be required to be recorded ; he has her entirely in his power.

1048. There might be means provided of compelling the registration of a marriage under those circumstances. The girl might go herself if the alleged husband would not, and in his absence after due summons there might be a registration of the marriage on the declaration of the girl. What is there to prevent that ?——That is just a process with a view to see whether or not there has been a marriage.

1049. (*Lord Justice Clerk.*) And that, according to the view you have given us, is required under the existing law in order to make that kind of marriage effectual ?——Yes, that is required under the existing law.

1050. (*Lord Chelmsford.*) Yes, because there must be a proceeding in order to render it actual marriage. Their marriage is not complete, it is an inchoate marriage, if I may use that expression, and it is completed by proceeding in court afterwards ?——Yes.

1051. I was speaking merely of this, for instance, take the contract *per verba de presenti* where the same consequences may follow, the *copula* may follow under those circumstances, and yet there be no proof of the marriage and so the girl may suffer ?——That is so.

1052. (*Lord Justice Clerk.*) Do you not think if registration were required under a heavy penalty in all cases of irregular marriage that it would operate beneficially in the way of inducing or compelling parties to come in and register even where there is a certain amount of clandestinity, because of the risk that they would run otherwise, whenever the marriage did come to be known, of incurring penalties ? ——Undoubtedly it would ; If you impose heavy penalties upon the connexion, and if these penalties are enforced the connexion becomes infamous, and people may be made, perhaps, to run to the registrar to get the thing made complete. A public opinion in favour of registration may in time be created, even as regards irregular marriages. But wherever two persons have a desire to conceal their marriage, the parties will run any risk, whatever be the amount of the penalty.

1053. Such cases may occur, but still, even in the

...pposing, when the marriage does come ...de known, which it will some day or other, ... will have to be paid, and that will surely ... a great extent as an inducement to disclose ... at the time and have it registered?——ould expect that to be the case. This connexion of nise *cum copula* is one that, as I have said, operates ficially, saving the honour of some unfortunate girl, is guarded by such limitations and restrictions I do not think it can be fairly objected to. In first place the promise can only be proved by the nder's writing or by his oath, and secondly, the nise can only be enforced during the life of both ies, so that the woman is compelled either to e forward at once or to hold her tongue for ever, to enforce it when the man is living, and when an answer to it. It does seem to me that our law romise *cum copula* should be allowed to remain. perates for good. Why should a man who has possession of a woman on the faith of a promise of riage (proved by his own writing or his oath) not compelled to fulfil his promise? I can see no wer to this, except that he may enter into marriage another woman who may know nothing of this ontract; and who may find herself in an awkward tion when the first woman proves the promise and ala. I admit the hardship of such a case, and I eat that I would like to see this rule altered. But a case which may occur even if you require the ost amount of publication. How is a woman who arried to a man in London to know that he has ife duly registered to him in the registrar's office Glasgow?

054. Can you say, in point of fact, with regard to marres by promise *subsequente copula*, that they seldom ain for any long time undisclosed? I am speaking of the promise *subsequente copula*. Have you ked at the cases with a view to that?——Yes; I w the cases pretty well. I am thinking rather of es I have been consulted about in my own private tice. I should say a very short time. There one or two exceptional cases where the conion has gone on for a long period undisclosed; in the majority of instances it is a short period.

055. (*Lord Chelmsford.*) Do you not think that law may facilitate seduction? A man may give erbal promise to an ignorant girl that he would ry her, and then having seduced and had connexion h her, desert her, and she would have no ress except putting him to his oath. A man who uld behave in that way would not, I think, scruple deny that he ever gave any promise at all?——I e seen such cases.

056. (*Lord Justice Clerk.*) That evil would exist der any law?——Yes. I saw a case a short time of a most respectable lady who was seduced under mise of marriage by a man in her own position of and living in the same town; no letters had gone ween them. She had no other resource but to refer o his oath, and he denied (and, I think, falsely) t he had given the promise.

057. (*Lord Lyveden.*) How is that as regards gitimacy? Illegitimacy is very common in Scotd, is it not?——There we come again to a matter o which we are a little at issue with regard to the s. Our system of registration of legitimate or gitimate children is very perfect. I have been inmed that it is not so in England, but that, unless *status* of the child as legitimate or illegitimate is ted at the registry, it is entered as legitimate, and ace the great disparity that appears between the ares as applicable to the two countries. I deny the rectness of your registration. Then again in Scotd we have two great variations arising from pecur customs which have been handed down from old es. In one or two counties in the north it is very mon amongst the lower orders, and also the middle sses, where they have taken each other as lovers, to e connexion before marriage, and, if the woman omes *enceinte*, the man marries her, but very often does not; hence in those counties the proportion is 16 per cent. of illegitimate births—in other counties of Scotland the average is very much less.

1058. Illegitimacy in Scotland is generally the consequence of a promise of marriage, is it not?——No.

1059. It has been stated by a witness here that it was almost always under a promise of marriage?—— I think it is not so. As a sheriff of a county having both an agricultural and urban population, I see a considerable number of filiation cases. Take the ordinary case of a ploughman, which is a very ordinary case; the girl is sitting by the kitchen fire along with the man, *et pares ætate et viribus coeunt.* The ploughman and the servant girl have connexion according to the impulses of human passion, stimulated by temptation and opportunity, and without any reference to marriage. That is my notion of illegitimacy in Scotland, except in the special case of the two or three northern counties to which I have referred.

1060. (*Lord Justice Clerk.*) May there not be another cause why there is a considerable discrepancy in the returns and the apparent statistics of illegitimacy in England and Scotland for this reason, that where connexion has taken place between a man and a woman before marriage, and they intend to marry afterwards in the event of there being a child, they will always in England marry before the birth of the child in order to make it legitimate, whereas in Scotland that is a matter of comparative indifference?——Yes; to that cause perhaps may be attributed a good deal of the disparity. I have read of it, but I cannot speak of this from personal knowledge.

1061. (*Dr. Twiss.*) What is the minimum expense at present of placing on public record by legal process an irregular marriage?——Do you mean entering it upon a register, or establishing it in a court of law by sentence?

1062. In every case, what is the minimum expense of it at present?——*5s.* I think is the fee for recording it in the register; but the matter is settled by the Act of Parliament. If the woman requires to establish her case in a court of law, we all know that the expense of that is pretty severe. *5s.* is the fee to the registrar for an extract under the Act 19 & 20 Vict.

1063. (*Lord Justice Clerk.*) According to the existing law, there is no uncertainty at all in regular marriages?——None whatever.

1064. And can be none?——And can be none.

1065. Because of the doctrine, that evidence of the interchange of matrimonial consent is sufficient?—— Yes.

1066. Do you not think that that is one of the practical benefits of the existing law?——Of the existing public law?

1067. Of the existing law of Scotland?——Certainly; the proof of consent itself being sufficient to establish a marriage, it reduces the question to be inquired into to a very narrow compass. It excludes all those other questions as to the validity of notices and matters of that description, and enables the Court at once to arrive at a very clear opinion upon the matter of consent.

1068. (*Lord Chelmsford.*) I see by the 17th and 18th Victoria the fee is *20s.* By the other Act, the 19th and 20th Victoria, chapter 96, for amending the law of marriage, the marginal note is, "Declaring under "what circumstances marriages solemnized in Scotland "shall be valid;" and then, "Certificated copy of "entry by sheriff depute that parties were married, "that one of them lived in Scotland 21 days preceding "such marriage conclusive as to its validity;" and then it enacts, "Such sheriff or sheriff substitute shall "certify the same under his hand, and shall thereupon "grant warrant to the registrar of the parish or burgh in "which the marriage was contracted, who shall forth-"with enter such marriage in the register of marriages "kept by him in terms of an Act of the 17th and 18th "years of Her present Majesty, chapter 80, and any cer-"tified copy of such entry, signed by such registrar, "and which such registrar is hereby required and "empowered to give, charging for the same the sum of "*5s.*, shall be received in evidence of such marriage."

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The Rev. JOHN COOK, D.D., examined.

1069. (*Lord Chelmsford.*) I believe you are a minister of the Church of Scotland?——I am a minister of the Church of Scotland at Haddington and a Doctor of Divinity.

1070. (*Lord Justice Clerk.*) You also hold an office in connexion with the General Assembly?——I am principal clerk to the General Assembly of the Church of Scotland.

1071. (*Lord Chelmsford.*) Of course your attention has been frequently directed to the marriage law in Scotland?——Yes; of course it is brought under the notice of every parish clergyman.

1072. And probably also to its influence on the morals and happiness of the people?——Yes.

1073. Will you be kind enough to give the Commission the benefit of your opinion with regard to its effect generally on society?——I should say that as the marriage law at present exists in Scotland, the effect is not unfavourable, so far as I can judge, to the morality of the people in any way. Your lordship, of course, is aware that it differs in some material particulars from the English law, at the same time, the great majority of marriages in every district with which I have been acquainted are performed in the face of the Church, that is to say, with a religious service. The cases where it is otherwise performed have been few, so far as my knowledge and experience go.

1074. We have had the same information from other witnesses who have been kind enough to attend, that these irregular marriages, as they are called, are rather uncommon?——They are uncommon. I have got a note of the marriages registered within the last five years in my own parish; the average was about 50 marriages per annum, and they were all regular marriages.

1075. Was there no instance of an irregular marriage?——No; I do not think there has been within that period, none that I am aware of.

1076. You are probably aware that there is no mode of enforcing the registration of irregular marriages?——I am aware of that.

1077. Do you think it would be a desirable thing that marriages of that kind should not be contracted without there being some record of them made afterwards?——I think that would rather interfere with the principle on which the Scotch marriage law seems to me to rest. I speak, of course, with great diffidence in the presence of those who know much more than I do about the law, but, if I understand the principle of the Scotch marriage law, it is that the marriage is constituted, so to speak, by the consent of the parties. It is not because I perform a certain ceremony that they are married, but from their own consent, and what you have to ascertain is, simply the fact whether both parties have in that way agreed to become man and wife. I think, if you were to insist upon registration, there are cases where that principle would be interfered with. The marriage might have taken place according to our notion of what constitutes a marriage in Scotland, and because you had not a particular kind of evidence of it, you would hold that it has not taken place.

1078. Do you not think it would be desirable, not for the sake of the parties themselves, but for the sake of their offspring, that there should be some proof of the marriage to establish the legitimacy of the children?——Of course it is important that there should be, in some way or other, some means of establishing it; but at the same time I do not know that, generally speaking, there has been much difficulty in establishing the fact of these marriages having been performed.

1079. They seem to be so very few that they do not furnish materials for any experience on the subject?——If I am right in that idea when the evils are of such rare occurrence, one would grudge altering the principle on which the whole system proceeds. We have a directory, called the "Directory of Publ Worship," in which directions are given as to t performance of the ceremony; that directory begi with the statement that marriage is not peculiar the Christian Church, but a matter of public polic and they go on, not to say that it is essential that should be performed by a clergyman, but they sa that considering how important a step it is in a man life, that it should not be entered upon by Christia persons without due consideration and without bei advised, and the blessing of God implored, and tha therefore, it is expedient that a clergyman shou perform the ceremony which is usually performe but still, I think, that implies that it is not essentia that it is, as it were, the consent of the party tha constitutes the marriage.

1080. I think that was the view of marriage whic was taken in England before Lord Hardwicke's Ma riage Act, that it was a civil contract established b the consent of the parties, although that consent wa to be given in the presence of a minister of religio who was present more as a witness than anythin else, and not to perform the ceremony?——I thin that is substantially the position in which we stan in Scotland now, and very probably that arose out what we consider the erroneous notions that th Roman Catholics held on that subject.

1081. With regard to irregular marriages that not quite the position, because there is no minister religion necessary in marriages of that kind; the are valid marriages merely by the consent of parties it is a civil contract as perfect as possible?——But a minister is present as a witness, simply that the may be evidence of the marriage having taken place there is a provision for evidence also in irregula marriages, there must be the presence of witnesse or there must be a written declaration of marriag I understand, given to the woman.

1082. What would be the inconvenience of requirin as of course there must be, proof of marriages of th kind, that the parties should afterwards register the marriage within a certain time, and that a penal should be imposed on the non-registration?——Th cause of a private marriage sometimes is just becau there are reasons why they do not desire at th moment that it should be made public. Those ma not be good reasons.

1083. Do you think it desirable to encourage co cealment of the fact of that important relation havi been established?——No, certainly not; but at th same time it might result sometimes in there being that case connexion without marriage at all. I da say a reason for an irregular marriage sometimes that, for some reason or other, a man does not wi to make public that he has formed such a connexi with a particular individual; at the same time I does not feel that, as a Christian man, he ought have connexion with her without giving her the rig of a wife, and if you were to insist upon registratio which is, in fact, insisting upon a public marriag in some cases there might be a strong temptati to use means for getting possession of the woma without any marriage ceremony at all; and ther fore, although it is very inexpedient, I thi that there should be concealment, yet I think it is sometimes a protection to the woman, and the woma is the person the law ought to protect; she is th pursued and not the pursuer.

1084. I am at a loss to see what protection it can to the woman that you should allow the man to co ceal the marriage?——She is married.

1085. But nobody else sees it?——There a means of proving it when she considers it neces to prove it.

1086. You think that the man may, under the c cumstances, desire to conceal the marriage for a particular object, which you have not sugge why should not the woman, under those circumstanc have the marriage registered? It is very difficult

gest cases which ought to be encouraged ?——I k it would be impossible to compel in most cases istration by the woman. Of course it implies a plete change in the law; it implies the abolition anything like a private marriage.

087. Exactly; but can you imagine cases where is desirable that private marriages should be ouraged, that the parties should be encouraged conceal a marriage under any circumstances, the t sacred and solemn engagement into which ties can enter, and, with a view to society, that an be desirable that parties should have an oppor- ity of concealing the fact of that relation having n established ?——No; but still I have the feeling, hough it is not desirable that a marriage should be vate, that it is more desirable that there should be private marriage than that the man should get session of the woman without any marriage at all, I should be afraid that in some instances the isting upon registration, or in other words, upon a lic marriage, might lead to that.

088. I do not exactly see how ?——Because if re is not some particular reason for wishing to con- l it, the man would be married publicly. If it is de essential to the validity of a private marriage that e registered, he may just as well be married in the al way by banns.

089. I find it very difficult to follow you; it may my want of understanding, but I do not at all see at advantage is gained to society, because we must k, in the first place, to society; it is a relation ich affects society very deeply ?——I do not know t I can explain it in any other way than that I nk that private marriages in certain cases are a tection to a woman, that a man assumes a rela- n which he would not otherwise do when he has opportunity of doing so without its being pub- y known at the time, and that if that were pre- ted it might lead to the connexion taking place thout any marriage ceremony of any kind, in other rds, to concubinage.

090. That he should have all the rights of a hus- nd without the world knowing that he was so ?—— ell, it is not right; I do not say so at all. My y feeling is, whether, if you prevent it, there ght not in some cases be greater evils, such as ving the rights of a husband without being a sband.

091. I am at a loss to see how the greater evil uld result from insisting that the registration of rriage should take place in every case, and after , as I gather from you, the occasions of this kind e very few, I do not see how any general feeling in otland could operate against such a provision ?—— they are very few; then if we think the principle a od principle, that is a reason for not changing it.

092. I take the principle of its being a civil con- act to be an exceedingly good principle, the question whether it does not want something in addition to at principle, in order to complete the contract and ve proper evidence of it ?——Of course it is desir- le that there should be evidence of it, when that can got without interfering with the principle.

093. (*Lord Lyveden.*) You think the occasional vantage of such a secret marriage as you have uded to, counterbalances the great evil, generally eaking, of clandestine marriages ?——I think that you are to insist upon registration in all cases, there uld occasionally be evils resulting from it, and at the cases are of such rare occurrence, compa- ively speaking, that no compensating benefit is ely to be derived from insisting on it.

094. (*Lord Justice Clerk.*) I understand your eaning to be this, that the evil of the existing stem in producing secret marriages is very slight ? —Very slight.

095. And that by an alteration of the principle ou might introduce another and a greater evil ?—— recisely; you might abolish these private marriages, nd instead of private marriages you might have a ate of concubinage, that is what I would be afraid of.

1096. In point of fact, within your own knowledge and experience, is concubinage a very rare thing ?—— I think so. *Rev. J. Cook, D.D.* 9 May 1866.

1097. In your own parish for example ?——I have not known any cases almost, within my own parish. I have known once and again a case where there was some suspicion of a man having been married before, where his wife had deserted him, where he and a woman lived together as man and wife without being so; but it is very rare.

1098. (*Lord Chelmsford.*) In the cases which you have been suggesting, the intercourse as man and wife must be secret, or else, if they are openly living together as man and wife, there is evidence of the marriage ?——Yes.

1099. Your cases are cases where the connexion between them must be secret, and kept from the world ?——Yes, that is so.

1100. Do you think that would be a desirable state of things ?——Certainly not. I do not argue that it is a desirable state of things.

1101. That might be retained, and is to be retained, and no alteration to be made for the purpose of protecting relations of that kind ?——Yes.

1102. (*Dr. Twiss.*) Is it within your experience that many persons have a marriage celebrated *in facie ecclesiæ* regularly, without avowing at the time that they have previously contracted an irregular marriage *per verba de præsenti* ?——No, I do not think that is common. I recollect upon one occasion marrying a couple who had contracted an irregular marriage. There was a place in Berwickshire where the parties used to come from England to be married, and upon one occasion, a great many years ago, a young man and woman went there and had one of those marriages, and the father of the girl came and pressed me very much to marry them over again. I said it was not necessary, but I did it.

1103. Does it ever happen, and would it be consistent with the practice of your Church, for parties who had contracted a marriage *per verba de præsenti* irregularly, to come and have their marriage, after proclamation of banns, celebrated regularly *in facie ecclesiæ* ?——I do not think it would be quite regular. The way in which I should act in such a case would be this: if they admitted that there had been an irregular marriage, I would what we call rebuke them, that is, I would admonish them on the impropriety of their conduct, but I would not insist upon marrying them over again, and there would be an awkwardness in the proclamation of banns, because you proclaim them as single parties.

1104. (*Lord Chelmsford.*) The marriage would have been constituted, and you could not marry the parties over again ?——No.

1105. (*Lord Justice Clerk.*) Can you give in the words of that part of the directory to which you referred on the subject of marriage ?——The words of the directory are as follows:—"Although marriage is "no sacrament, nor peculiar to the Church of God, but "common to mankind and of publick interest in "every commonwealth; yet because such as marry "are to marry in the Lord, and have special need of "instruction, direction, and exhortation from the "Word of God, at their entering into such a new "condition, and of the blessing of God upon them "therein, we judge it expedient that marriage be "solemnized by a lawful minister of the Word, that "he may accordingly counsel them and pray for a "blessing upon them."

1106. You hold that portion of the directory to which you have referred to be an authoritative exposition of the view of the Church on the subject ?—— Exactly.

1107. I understand the result of your experience to be, that the existing law of Scotland is not inexpedient in its operation as regards the morals and well-being of the people ?——No, I could not say that it was. I have seen no instance of its affecting them unfavourably.

1108. You have been for a long time a parish cler-

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gyman ?——I have been a parish clergyman now since 1832—34 years.

1109. Not altogether in the same parish ?——No ; I was a year and a half, minister of a small parish in Fife. I have been at Haddington nearly 33 years.

1110. (*Mr. Dunlop.*) Do you object to registration simply as a means of publication, or merely considered as an essential requisite to constituting marriage ?—— I object to its being made an essential requisite.

1111. You may require it under a penalty ?——Yes, but I would object to its being held that there was no marriage where there was no registration.

1112. Have you the same objection to requiring registration under a pecuniary penalty ?——No, I have not the same objection.

1113. (*Lord Chelmsford.*) Making it a record of the marriage, but not the only evidence of the marriage ?——Yes ; perhaps your lordship misunderstood what I said. What I meant was, that I should object to its being held that there had been no marriage performed where there was no registration.

1114. I meant to convey that to your mind, whether there might not be a registration as proof of the marriage, but not the only proof ?——I should not object to it as a proof, if not made the only proof.

1115. (*Mr. Dunlop.*) Do you think that the publication of banns is a very efficient mode of publication of the intended marriage ?——I do. I think the publication of banns is very useful, because it brings the intention of marriage before different persons likely to know the circumstances of the parties intending to contract it, viz., the Session clerk, the minister of the parish, and the congregation.

1116. In such parishes as St. Cuthbert's, does it give any information at all ?——There are always people present who would know the parties, but in such parishes as mine, of course the Session clerk is bound in the first place to take reasonable means for ascertaining that they are not married persons, and then the lines are brought to me before the proclamation takes place, and it happens very often that I know them personally ; of course the fact of their being proclaimed in church gives an opportunity to a great many people to object, if they have reason for objecting.

1117. The proclamation is before worship begins ? ——Immediately before ; but the people are always assembled when the proclamation takes place.

1118. (*Lord Chelmsford.*) Properly, I believe, there ought to be proclamation on three successive Sundays ?——Yes.

1119. But that has been generally dispensed with, has it not, and the publication takes place three times on the same Sunday ?——Yes. It is not by any means always dispensed with, because I believe the Session clerk exacts a small additional sum generally, and therefore the labouring people are very often pro claimed in the regular way, and in that way where is most desirable you should ascertain it, they ar generally proclaimed three times, that is to say, tha people who are less known are proclaimed in tha way.

1120. (*Mr. Dunlop.*) There is no ecclesiastica authority for dispensing with the proclamation fo three successive Sundays ?——No, I do not think there is.

1121. No warrant ?——No.

1122. (*Lord Justice Clerk.*) Only lax practice ——It is just that.

1123. (*Mr. Dunlop.*) Is the practice of giving certificate that it has been proclaimed for three suc cessive Sundays maintained ?——No. I think the generally say that they have been three times pro claimed in order to marriage. I think that is th form of the certificate.

1124. (*Lord Chelmsford.*) I suppose there hav been no instances of censure having been passed on minister for having published the banns three time on the same Sunday ?——No, it is not the clergyma that does it ; but that makes no difference, of course because it has his sanction ; it is a long custom, think. Ever since I recollect, it has been so.

1125. Does the Session clerk proclaim it ?——Yes and, in point of fact, that is the source of emolumen of the Session clerk in most parishes.

1126. The Session clerk attends for the purpose, suppose. In populous parishes the banns would b published probably every Sunday ?——Every Sunda or almost every Sunday, there is a proclamation banns in a populous parish, and even in a parish lik mine, where there is a population of nearly 6,00 people, almost every Sunday there is a proclamatio of banns and the people are quite aware of it, an there is a natural curiosity to hear the proclamation

1127. Do people attend to it ?——Yes.

1128. In England the proclamation takes place aft the second lesson is read ?——The people assemble the first instance in the Scotch Church, the ministe comes in two or three minutes after they hav assembled, and it is generally during that interval, immediately before he begins the service, that th proclamation takes place.

1129. As far as my experience goes nobody attend to the proclamation of the banns in London ?——Whe I speak of that, probably in a country parish like m own, where people know of each other much bette there is more of that kind of curiosity than the would be in a large town where a vast number of t names must be unknown.

1130. Are there any other observations which yo would desire to make to the Commission ?——I am n aware that there is anything else.

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The Reverend James Grant, D.D., D.C.L., examined.

1131. (*Lord Chelmsford.*) I believe you are a Doctor of Divinity and Minister of St. Mary's parish in Edinburgh ?——I am.

1132. Of course your attention has been frequently called to the state of the marriage law in Scotland ? ——It has.

1133. Will you be so kind as to give the Commission your opinion with regard to the effect of the law upon the morals and the happiness of the people ?——I suppose you mean so far as that law differs from the law in England ?

1134. Yes.——The opinion I have come to form on the subject after serious reflection and pretty wide observation is that the peculiarities of the Scotch law in regard to the constitution of marriage, while attended by partial evils, are favourable to the morality and well being of the people by restraining licentiousness and remedying or limiting the evils of concubinage and illegitimacy.

1135. I allude of course particularly to what are called irregular marriages ?——Yes, I alluded to them too.

1136. I dare say you are familiar with the two kin of marriage ?——Yes.

1137. According to Mr. Fraser, consent *per verb de presenti* constitutes marriage, but there is some dou whether the other marriage *promise cum copula* is complete marriage ; we have heard that opinion fro Mr. Fraser, and therefore I will not trouble you wi regard to the constitution of marriage ?——There a two modes, as I understand, by which marriage m be constituted, or rather by which it can be proved, which the consent, which is the essence of marriage by our law, is inferred. I allude to the marriage by hab and repute as it is termed, and a marriage by a promi *de futuro* followed by connexion between the parti the intercourse following the promise having be connected with it.

1138. Do you think it is desirable to retain a ma riage constituted in that way ?——There are certain evils attending it; for instance there can be no comple registration of existing marriages consistent wi that law, but I am humbly of opinion that benefits the morality of the people do result from the law as now stands.

1139. Do you not think it very desirable that there could be evidence of all marriages by means of a gister or some record?——I do think it very impor- nt, but I think that advantage may be purchased at o high a price.

1140. What price are you imagining would be the rms of the purchase?——The creating more difficulty an now exists in the way of forming the marriage . I think it of great importance that it should be sy to contract a marriage, because, though a marriage ntracted hastily and without due deliberation and e advice of friends may prove an illassorted and happy one, greater and more widespread evils may sult from an attempt to restrain youthful passion and patience.

1141. I was not suggesting that there should be any pediment to the constitution of the marriage, but at there should be a record of that marriage kept erwards. Do not understand me as suggesting that e marriage should be rendered invalid if there was such record kept, but that it should be evidence of e marriage but not the only evidence?——I should ink it very important that a record should be kept far as practicable of every existing marriage, pro- ded that end could be accomplished without such an eration of the law of Scotland as to the constitution marriage, as would render it impracticable to form valid marriage in any of those ways that the law now rmits by holding registration to be essential.

1142. What is the species of registration for regular arriages?——There was not any registration effec- ally provided for till an enactment, comparatively cent, was passed by which all regular marriages must registered, and they are accordingly now registered. he proof of the marriage is made up after the cere- ony by the clergyman, and he and the parties and vo witnesses sign a schedule which is thereafter nded to the parties, and it is made compulsory on em under a penalty, to return that to the registrar of e district.

1143. Then does the minister keep any register mself, or any record of the marriage?——I have ways kept one.

1144. He is not required to do it?——It was not quired by law formerly, nor is it so now. It is not much use now, though some clergymen like myself ay still keep a private register; but formerly it was ry necessary, because it was in general the only re- rded evidence of the marriage. The proclamation banns, of which a record was kept as it is now, ly proved the purpose or intention of marriage, and e certificate of solemnization given by the clergy- an was committed to the keeping of the parties, and as often lost by them. I have often had to renew ch certificates from my private register.

1145. Do you think it would be desirable that the inister of every parish should be a sort of local re- strar, and keep a register of these marriages, sending copy to the Registrar-General, so that there might be idence of the marriage?——That might very well e; and it has sometimes occurred to me that the law to registration is somewhat defective, inasmuch as leaves the parties themselves to carry the document the registrar, and have it recorded there. I submit at it would be better if the clergyman who cele- rates the marriage were made responsible for that turn being made. After I have completed the cument and given it to the parties, I always remind em of the law by which they are required, within ree days, to hand or send it to the registrar; but ere is no security that they comply with that in- nction, and sometimes, when they are ignorant ople, they may not do it. I think it would be tter if it were imposed as a duty on the clergyman ho celebrates the marriage, and that he should be ade responsible for doing it.

1146. (*Mr. Dunlop.*) Do you send any intimation the registrar that a marriage has taken place?—— o, we do not, that is not required; at the same me the registrar may be on the look-out for a certain arriage, because he is previously aware that the parties have been proclaimed with a view to marriage, and if the evidence of the marriage is not produced to him he may, perhaps, make inquiry, with a view to the imposing of the penalty for neglect.

1147. (*Lord Justice Clerk.*) Have you anything to suggest with regard to the existing practice of proclaiming banns; any improvement in it, for the purpose of securing greater publication?——I do not know any better way that could be adopted than that now in practice of proclaiming in the parish church. It is very true that all the people belonging to the parish cannot be there at one time. And now that there is more or less dissent in every parish, it is but a portion of them that can be expected to be even occasionally there; but, on the whole, I do not know any better way to make the purpose of marriage public. I observe that Lord Advocate Rutherford, when he proposed a Bill, I think in 1849, with a view, I suppose, to the gratification of dissenters, who were a little jealous of proclamation being restricted to the parish church, provided that the publication might be made through the registrar. But the very mode of publication prescribed to him was that he should post the notice upon the parish church door previously to the hours of divine service. That was admitting the fact that the best way, after all, of making it public was through the parish church, and it does appear to me that it is far better that it should be read by the precentor in the parish church, when the congregation are fully assembled for worship, than that it should be affixed to the church door where none can see it but those who are resorting to the church, and it may attract the notice of few even of them.

1148. (*Lord Lyveden.*) Is much attention paid to the publication of banns?——There is a great deal of attention paid to it, sometimes, perhaps, from idle curiosity.

1149. Did you ever know any objection made?—— I have known objections made.

1150. In your own parish?——Objection communicated to the clergyman in consequence of the proclamation, but not, so far as I remember, offered at the time in the face of the congregation. With reference to the Lord Justice Clerk's question, I may say that there is one respect in which I think the law, as to proclamation of banns, is defective. There is no provision made, so far as I am aware, for disposing, even in a temporary way, of objections made on the proclamation. These objections may be of a most serious character, as, for instance, that the parties are within the forbidden degrees, or that one of the parties is already married. I do not know that a kirk session, which is composed of the minister and a few laymen, who are a sort of lay assessors to him in the parish, have any authority in such a case to do more than, while they issue the certificate that the proclamation has been made, which they are bound to do, to note in the body of the certificate that such and such objections have been made; but then who is to judge of the truth and effect of those objections?

1151. (*Mr. Dunlop.*) Does your certificate not bear the proclamation has been made and no objection taken?——It does, and truly so, in the great majority of cases; but suppose an objection has been stated, it may be one of a serious character that should be inquired into, or it may be one of a frivolous character that may be safely disregarded.

1152. (*Lord Lyveden.*) Is the minister bound to enter an objection whether it is frivolous or not?—— If it were evidently frivolous I might be disposed not to enter it in the certificate, for instance, an objection which is sometimes made by a young woman who is disappointed and who alleges that the bridegroom was under a previous promise to her; we all know that that is not a valid objection and that it might be safely disregarded, but then the objection may be of a more serious character and not so easily disposed of. For instance, a case occurred within the bounds of the presbytery of Edinburgh lately, where the friends of a man who was proclaimed, being unfavourably disposed towards his marriage, objected on the

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ground that he was in such a state of fatuity as to be incapable of contracting marriage. The minister of that parish consulted with me as to what he should do, for he was threatened by the bridegroom's friends with an action at law if he did issue the certificate of proclamation, and he was threatened on the other side by the man himself and the bride if he did not issue it. What I advised him to do was to issue the certificate, but to put in the body of it that that objection had been made; but I said, "You and your lay elders are "not the parties to judge whether that is a well-"founded objection or not. It puzzles the judges of "the land sometimes to say whether a man is in such "a state of fatuity as to be incapable of entering into "a marriage contract, and of course it is out of the "question that a clergyman should judge of that."

1153. (*Lord Chelmsford.*) What I understood Mr. Dunlop to suggest was this, that inasmuch as the certificate generally bears that there is no objection to the marriage, if there is a certificate that there is an objection, the minister would not be bound under those circumstances to celebrate the marriage?——No, and a respectable and prudent clergyman would naturally decline to celebrate it; but on the other hand great injustice might be done to parties. The objection might have been stated in malice, and might when inquired into prove utterly groundless.

1154. Still, I apprehend, it would be a protection to the minister, who would pause before he chose to celebrate a marriage of that kind to which there was that objection suggested?——Suppose the parties go to the minister of the parish, upon whom they may be supposed to have a legal claim to solemnize their marriage, what is he to do in such a case? If the objection is well founded he might justly refuse, but he is not to assume that, and he is not qualified to decide.

1155. (*Lord Lyveden.*) You think it should be made compulsory upon him to state the objection?——I think it is compulsory now, but what I aimed at was some authority which could give a deliverance in such a case, and if cause were shown might suspend the issuing of the certificate till inquiry should be made.

1156. (*Mr. Dunlop.*) Some tribunal?——Some tribunal, the Judge Ordinary of the bounds or other officer.

1157. (*Lord Lyveden.*) Why should he not be bound to enter the objection in the certificate?——I do not object to it.

1158. You wish it, I understand?——Surely, and I think if the certificate is issued it must be entered.

1159. (*Lord Justice Clerk.*) And I understand it is generally done?——Of course it is done.

1160. (*Lord Chelmsford.*) In a case of that kind, where parties interposed and objected, of course the minister would exercise his discretion, he would ascertain who the parties were, whether they were likely to be informed on the subject, whether they had any interest in inducing them to misrepresent the matter, and in that way exercising an honest and fair judgment on the matter. If he felt that there were grounds for the objection, I apprehend, he would be justified at all events in postponing the marriage?—— In postponing the marriage, but for how long is he to postpone it? Is it to be until the parties go with their declaration into the Court of Session.

1161. I will put it further, to refuse to celebrate that marriage, if exercising an honest judgment on the subject, he considered the objection was well founded?——Yes; but then the parties may be subjected to a serious grievance. They fail to get their marriage solemnized, simply because an objection has been stated without its having been disposed of by any one competent to judge of it.

1162. (*Lord Lyveden.*) It is not necessarily the same minister gives the certificate who solemnizes the marriage?——Not necessarily.

1163. (*Lord Justice Clerk.*) I understand your object is to relieve the minister who is asked to celebrate the marriage from the responsibility of dealing with the objection?——Yes.

1164. For that purpose you would constitute some tribunal which should do it for him?——Precisely so. It is not merely to relieve the clergyman of the responsibility, but because I think he is not the party best qualified to make the inquiry and pronounce on the objection.

1165. (*Mr. Dunlop.*) Suppose a certificate was brought to you from another parish with which you in your session have nothing to do, but that contains in it a declaration that a legal and well founded obstacle exists against the marriage, would you consider yourself entitled to marry them under those circumstances?——I would not.

1166. (*Dr. Twiss.*) Are you bound to defer to an objection if it has been put on record, or may you in spite of the objection marry?——If I were not the minister of the parish, upon whom they had a legal claim for my services, I would be disposed to decline in such a case. I would be entitled in law to do so and prudence would dictate my doing it. But suppose the parties belonged to my own parish, and had thus a legal claim on my services, I should feel a good deal puzzled what to do, and might feel constrained to decide on the objection. If an objection be made and the parties are married in the face of that objection under an erroneous impression that it is not founded in fact, the effect might be most serious and the evil irremediable, as, for instance, parties within the forbidden degrees of consanguinity or parties of whom one was previously married.

1167. (*Lord Chelmsford.*) You would be in a very awkward dilemma, because if there was an objection to the marriage, on the face of that objection you could not well proceed to perform the marriage?——Yes; and on the other hand, the objection might have been stated in mere malice.

1168. (*Lord Justice Clerk.*) And it may be stated in mere malice where it is indispensable to the parties to get married immediately?——Yes. In regard to your question whether I had anything to suggest in regard to proclamation, I may further say that we clergymen do not very well know what to do in the case of one of the parties only residing in Scotland, and the other coming from England, and coming down just for the celebration of the marriage. We are not bound to know what the law of England is in regard to proclamation of banns or special licence, and perhaps a good many of us do not know very much about it. But besides that, parties may come from France or other foreign countries, with whose laws we are still less acquainted. The law is, that we are not allowed to marry without proclamation of banns; but in a case like that we can have the proclamation of banns only in the church of the parish in which one of the parties resides, and not the other. There is a defect here, and we do not know how to supply it, and are obliged to be guided by our own discretion.

1169. (*Dr. Twiss.*) Does it happen that when the schedule is produced to warrant the marriage an objection can then be taken to the proclamation?——No, I do not think there is room for any objection there; at any rate, objections are not then usually called for, and the parties being only friends with them to the solemnization.

1170. At present the sessions clerk makes the proclamation?——He makes the proclamation and issues the certificate, if there are no objections. If there are objections, I hold that he is still bound to issue the certificate that the parties have been proclaimed, but also to indicate in it that the objection has been made. Then the parties carry his certificate to the registrar of the district, who issues the schedule with the form according to which the marriage must be attested.

1171. Is that schedule imperative on you to marry?——The schedule contains different columns. It does not prescribe any form of marriage, but only of attestation.

1172. Supposing it is presented to you, is your

cretion at an end when that schedule is presented you?——They must produce to me as well as to the gistrar the certificate of proclamation, and I am titled, in the first instance at least, to exercise my n discretion in judging how far it is satisfactory.

1173. (*Mr. Dunlop.*) But before the proclamation es place do they not apply for some warrant or thority to make the proclamation, and do not you en make some preliminary inquiry as to whether re are any objections?——No; I do not think that t is required by law, though it is the practice in linburgh, but it is quite local. That is, just to ieve the sessions clerk of his responsibility.

1174. Generally he does it by his own individual thority?——Yes.

1175. It is not the warrant of the kirk session?—— , it is not. It is to relieve him of responsibility, d for his own satisfaction, particularly as to the idence of the parties.

1176. (*Lord Justice Clerk.*) We are told that it is ommon practice to have the banns proclaimed three nes upon one Sunday. That is mere practice, thout any warrant of ecclesiastical or civil law, is not?——I do not think there is any express warrant, t it has come to be, in all the parts of Scotland with ich I am acquainted, the practice.

1177. Do you see any objection to that practice?——I am not favourable to keeping marriages very ng in the wind, and to require three weeks for the rpose of proclamation. At the same time, there is doubt that the existing practice is an infringement of e rule as originally prescribed; because, though the tice is read three times, it is to the very same par- s assembled for worship.

1178. It is equivalent to one proclamation?——Yes.

1179. (*Mr. Dunlop.*) It might be on the Sunday, d the marriage on the Monday?——Yes.

1180. And in a thinly-peopled district there is very tle time to get the news spread?——Yes.

1181. (*Lord Justice Clerk.*) Upon the whole, do u think it desirable that the practice of proclaiming one Sunday should remain, or that it should be ered in any way?——I do not see that there could any objection to our being obliged to have it more equently, say on two Sundays.

1182. Should you say two Sundays would be suffi- nt?——I think it would.

1183. (*Mr. Dunlop.*) Take a parish like St. uthbert's, with half a dozen district churches or apels, would it not be far more efficiently done in e chapel or district church, instead of being done the parish church, where there are 15 or 16 a day?——My humble opinion is, that it ought to be done ere now under the existing law, in those chapels at have been erected into parish churches.

1184. And it is not done?——I do not understand at it is done, but the law as to proclamation pro- eds on the assumption that the parish church is the ace of resort of the parishioners, and I think on at ground, where a parish is erected, then *quoad ra* only, that the proclamation should be made ere, and I do not know that it should be made any- here else. I see no necessity for it.

1185. (*Lord Chelmsford.*) Does the proclamation ke place after the clergyman comes into church?—— o, but after the bell, if there be one, has ceased to ng, and when the people are fully assembled for orship.

1186. Not while they are coming into the kirk?—— Some people will come in too late, but my practice to walk into the pulpit, and commence the service e moment the proclamation of marriages is made.

1187. (*Dr. Twiss.*) As soon as it is over, or as on as it is begun?——As soon as it is over.

1188. (*Mr. Dunlop.*) Do you see some difficulty having proclamations in dissenting chapels?—— t is not very easy, for one thing, to make up a list of ecognized dissenting chapels in each parish of a very arge town.

1189. I mean to members of their own congre- ation?——Well, but then it does not follow that because a man is a dissenter, all his friends and those who know his circumstances are dissenters too. Whether the matter of proclamations of banns were in the hands of a registrar, or of the session clerk as now, it would, I apprehend, be too much to leave it to his discretion to determine whether, in the particular circumstances, the proclamation should be in the established or in a dissenting place of worship. There seems to me to be a necessity for a fixed rule, and for obvious reasons, it would never do to refer the mode of publication to the parties themselves.

1190. (*Dr. Twiss.*) I believe at present the law requires a residence of six weeks before banns can be published?——Yes, the law is that that is considered as a person's parish in which he has last resided continuously for six weeks, or had his ordinary place of residence.

1191. (*Lord Chelmsford.*) Is it the man's parish that is regarded?——The parishes of both parties.

1192. I suppose the residence of only one of the parties is necessary for six weeks. Suppose the other should happen to be an Englishman, and he comes up to Scotland to marry a Scotch girl who is residing there, and has been residing there, I suppose that would be sufficient?——Then the certificate of proclamation bears that these parties were proclaimed, the one of them residing in this parish, and the other residing in such a place in England; and I have already explained that the law of proclamation in regard to such a case is, in my humble opinion, objective. There is a want of assurance in regard to the circumstances of one of the parties.

1193. (*Mr. Dunlop.*) One residing in one Scotch parish, and another in another, do you then require a proclamation in both parishes?——In both of course, because the very object of proclamation would not be served otherwise, and hence the difficulty from which I wish to be relieved in regard to parties who come from England, or from a foreign country.

1194. (*Dr. Twiss.*) Do you think six weeks of preliminary residence might be reduced safely?——It is very hard upon some parties. As for instance, those who are in the military or naval services, to require six weeks' residence. At the same time, if the period were to be very much reduced, it would not exactly serve the purpose, because upon a less residence than that, a stranger may not be supposed to be known. In fact he may not be very well known even after six weeks' residence.

1195. (*Lord Chelmsford.*) Under the Act which practically abolished the Gretna Green marriages, 21 days is sufficient?——Yes, I am aware of that.

1196. (*Dr. Twiss.*) Would you see any objection to that being the general rule?——On the whole, I do not see any objection.

1197. The law now requires nine weeks, three publications in separate weeks, three weeks of which you in practice get rid of?——The law requires strictly proclamation on three several Sundays, but in practice, the matter is concluded in one. Perhaps, however, I should mention that when any objection is made, it is a very common thing for the session clerk and the minister (with whom he naturally advises), to forbid its being concluded on one Sunday, if, before the proclamation is made, any objection shall have been brought to their ears. It is a very common thing in such a case, to require the literal observance of the law as to proclaiming on three Sabbaths, or at least on two, that a week at least may be allowed for them to inquire. That seems to proceed on the assumption, that though we are allowed, in practice, to complete the thing in one Sunday, we may take two Sundays, or three if we think fit.

1198. (*Mr. Dunlop.*) What authority fixes the fees which the sessions clerk may exact on different occasions?——I do not know. Perhaps kirk sessions have taken upon them to increase the fees in some of the parishes, but I have great doubts whether they are entitled to do so. My idea is, that the right to exact fees rests upon use and wont, and that it is

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beyond the power of a kirk session arbitrarily to increase the fees.

1199. (*Lord Justice Clerk.*) Can you tell us what is the ordinary fee for proclamation ?——It is a guinea, I think, in Edinburgh, but I do not think it is so high in some of the suburban parishes.

1200. (*Mr. Dunlop.*) That is all on one Sunday? ——Yes.

1201. (*Lord Chelmsford.*) For three successive Sundays it is less ?——Yes ; I think only 10*s.* 6*d.*, and that seems to involve a very objectionable principle. If the people require to be proclaimed for three Sabbaths, it seems a very strange thing, in consideration of an additional fee, to dispense with that, and put it over in one Sunday ; but that is the principle in Edinburgh.

1202. A guinea seems to be a very large fee to require ?——I was going to mention, that in a parish in the suburbs of Edinburgh, with which I was formerly connected, the fee was only 7*s.* 6*d.*, and it is no more now.

1203. I am told by my friend Dr. Twiss, that 7*s.* 6*d.* is the average fee in England ?——Yes. My belief is that in some country parishes in Scotland it is even less.

1204. (*Dr. Twiss.*) What is the fee for the celebration of the marriage ? Is any fee payable to the clergyman ?——No. No fee is exacted for the marriage at all. Nor have the clergy in Scotland any fee for any duty they perform.

1205. (*Lord Justice Clerk.*) The ministers of the Church of Scotland receive no fees for the performance of any duty ?——No.

1206. (*Mr. Dunlop.*) No part of the proclamation fee goes to the minister ?——No.

1207. (*Dr. Twiss.*) Is the office of sessions clerk a lucrative office ?——In parishes of very large population it is.

1208. (*Lord Justice Clerk.*) Your parish in Edinburgh is a considerable one in point of population ——Yes. There are about 8,000 inhabitants.

1209. And your former parish of South Leith was a large one also ?——Yes. There were about 20,000 in it when I served the cure.

1210. It has been diminished since that by a division I believe, has it not ?——It has to a small extent by the erection of a new parish taken from it and the adjoining parish.

1211. Your experience therefore has been entirely in urban parishes of large population ?——Entirely.

1212. For how long a period of years ?——For somewhat about 40 years.

1213. You were asked at an early part of your evidence whether you saw any objection to requiring registration of irregular marriages. What I want to put to you is this : supposing that registration were not to be required as essential to the validity of the marriage, but that it should be prescribed and enforced by a penalty, do you think that would interfere at all with the principle of the marriage-law of Scotland ?——No, but I fear the requirement would be only partially effectual. It would depend somewhat on the amount of the penalty.

1214. It would not introduce any new condition as essential to the constitution of marriage ?——No, it would not. But I am afraid there would be very great difficulty in getting the parties to comply with any law that required registration, unless it were made essential to validity, because the parties have sometimes very strong motives for concealing their marriage, which a pecuniary penalty would not overcome. So far, however, as registration might be thereby rendered more complete, a great benefit would be secured.

Adjourned.

Wednesday, 6th June 1866.

PRESENT :

Right Hon. the Lord Chelmsford.	Sir Hugh M. Cairns, Q.C., M.P.
Right Hon. the Lord Naas.	Travers Twiss, Esq., Q.C., D.C.L.
Right Hon. the Lord Lyveden.	Alexander Murray Dunlop, Esq., M.P.
The Right Hon. William Monsell, M.P.	

LORD CHELMSFORD in the Chair.

Rev. R. Wallace.

6 June 1866.

The Rev. Robert Wallace examined.

1215. (*Lord Chelmsford.*) What religious denomination are you ?——Wesleyan Methodist.

1216. At Belfast ?——At Dublin at present.

1217. Of course your attention has been called to the state of the marriage law in Ireland, particularly with reference to the effect upon persons of your religious denomination ?——Yes, it has engaged my attention to a considerable extent, especially as I was lately mixed up with the obtaining of a Bill that redressed the grievances under which we laboured ; that led me to an acquaintance with the state of the marriage law in Ireland.

1218. What were the particular grievances that the Bill redressed ?——The general marriage law of 1844 : the 7th and 8th of Her present Majesty left Nonconformists in a position in fact that rendered them unable to celebrate marriage at all in a strict legal sense. The registrar must be present. In the first place we had to send notice to the board of guardians, and then we were entirely dependent on the presence of the registrar to give validity to the marriage, and the marriage ceremony itself, was represented in the records as being performed by the registrar, so that in point of fact, though we were permitted to be present and to hold a religious service, and though in the estimation of the parties married we were the celebrants, yet in point of law we had no place at all. These were some of the special grievances ; they led to such results as are hardly possible to conceive, for instance, sometimes the registrar would forget, and when all the parties were present he would not be there. Of course all the arrangements which were made fell to the ground and all the machinery had to be put in motion over again, and the notice to be served anew. I may give one particular instance, which probably will illustrate the evils strikingly. It frequently happened that the ministers who celebrated marriage were not personally acquainted with the registrar, and never saw him till he came to the place. On one occasion one of our ministers solemnized a marriage in the presence of the registrar as he supposed, but six or eight weeks afterwards the minister got an intimation from the registrar, stating that he had committed a very illegal act in celebrating a marriage in the absence of the registrar. It then turned out that the registrar had been ill, and that his son came and brought the registry books to the church ; he did not exactly represent himself as the registrar, but he came in his place and said nothing to the contrary, and the parties assumed that he was the registrar. The consequence was that the minister had committed a felony, and the parties man and wife, as they supposed, were not married at all. He had left the district in which the celebration took place, and your Lordship and the Commission will easily conceive all the consequences that must follow

uch a case. There were many instances of great nvenience; that is one of the worst of them.

219. Was there any provision made for the illness the registrar?——No provision whatever; there s no deputy-registrar, and no provision made in e of his illness, or death, or absence.

220. Probably you will be kind enough to tell us what way the Act of 1844 remedied a particular tion of these grievances?——It did not remedy at all; all these grievances existed, and were subuent to the Act of 1844, and in fact the Act of 4 created them. Up to 1844 all the Non-conmists stood upon the same footing, and it was preed that they had all at common law a right to ebrate marriage, and up to the celebrated case ich led to the passing of the Act of 1844, when it s declared by the House of Lords as the last court appeal, that the marriage celebrated by a Preserian minister between a Presbyterian and Episalian was invalid; it was the agitation arising out that decision that led to the passing of the Act of 4, but the Act of 1844 simply took cognizance of celebration of marriage by the Established Church, d by the Presbyterian church appointing machinery which the Presbyterian Church could license from Presbytery, but left all the Non-conformists and the Presbyterians that were not disposed to fall in h that arrangement, not only without any improvent, but it took away from them what they had fore, and made, as I have just said, the celebration marriages impracticable.

1221. Will you be good enough to state what are the evances which now affect persons of your religious nomination under the existing law?——I should te that as a Wesleyan I have in Ireland nothing cially to complain of at all. The Act of 1863, ought in by Sir Edward Grogan, and carried through rliament, completely redressed our grievances, and a Wesleyan I do not feel that I have any special evances to redress. Taking our position as compared th other classes for whom the machinery is provided, conceive that no class is in a better position than are, in fact we would not exchange our position th any of the other denominations.

1222. Then there is nothing with respect to the eration of the existing marriage of which you, as a esleyan Methodist, would complain?——Not in mparison between one class and another class; of urse I complain and we all complain of the state of e marriage law, as it affects the whole community ry much indeed.

1223. In what respect do you complain of it, as it fects the whole community?——In the first place, are dissatified that the law itself should be divided to so many parts, that is, that instead of having a w for all parties, the law should be made in reference such a number of parties; we complain in the st place, that the laws affecting the celebration of arriage are so numerous; we complain in the cond place, that some of them are very hard to derstand; that it is not very easy to say to what tent some of the old Acts have been repealed by endments that have passed afterwards; that the ate of the marriage law itself is in some respects ecure, that it is anomalous, if not quite, at least arly beyond expression; for instance, in addition the number of Acts that regulate the celebration marriage, marriage is celebrated in Ireland lawfully several different ways: there is one law for the stablished Church, one for the Presbyterian, one for e Non-conformists, one for the Roman Catholics, e for the Quakers, one for the Jews, and a law for vil marriages where there is no religious service, so at in reality there are seven different methods of elebrating marriages legally in Ireland. Of course we do not specially complain, we do complain at that should be the state of a law which we conceive ould be very simple and clear. Then there are not ly these different methods, but the anomalies of them e very striking; for instance, it is a felony on the art of a parochial clergyman to celebrate a marriage that may be lawfully celebrated by a Roman Catholic priest. It is felony for the Roman Catholic priest to celebrate a marriage that may be lawfully celebrated by a parochial clergyman, a Presbyterian minister, and a Non-conformist minister, and it is felony for a Presbyterian minister and a Non-conformist minister to celebrate a marriage that may be lawfully celebrated by a clergyman of the Established Church. We conceive that with such a state of things as I have now the honour of pointing out to your Lordship and the Commission, though no one denomination as compared with another denomination has any special right to complain, that each one has a general right to complain.

1224. By what law is it a felony if a clergyman of the Established Church marries a Protestant and a Roman Catholic?——That is not a felony; but this is a felony: a Roman Catholic priest may marry without the publication of notice in a chapel in a private house at any hour of the day or at any hour of the night; but it is a felony for a clergyman of the Church of England to do so. The Roman Catholic priest can do in various ways what I have stated to your Lordship would be a felony in the case of the parish clergyman; then of course it is a felony on the part of a Roman Catholic priest to celebrate a marriage between a Roman Catholic and a Protestant of any class.

1225. That is by the Act of Parliament as to mixed marriages?——Then it would be felony in the case of the Presbyterians and Non-conformists to marry where one of the parties is not a member of the communion of the celebrant.

1226. I should be sorry to suggest any doubt of your accuracy, but I am rather startled at some of your propositions?——Very likely. I think I can satisfy your Lordship and the members of the Commission that I am quite accurate in the statement that I have the honour to make. Our own grievances led me to pay some attention to the state of the marriage law, and I think I can illustrate each of the instances that I have stated to your Lordship and the Commission. I have stated what would be the effect, if any clergyman, or any Presbyterian or Non-conformist minister celebrated a marriage in the absence of witnesses out of the canonical or legalized hours in any place but a church or registered building. The Roman Catholic, as I have stated, can do so; that is, the law has recognized the right of the Roman Catholics to celebrate marriage at any hour and under any of the circumstances that I have stated, which is often done. The next point is with regard to the Non-conformists; it would be felony for me, for instance, to marry two Episcopalians. That is clearly stated in the law of 1844, and it is not repealed in the law of 1863, which redressed our grievances.

1227. (*Dr. Twiss.*) Would it be a legal marriage?——It would be a legal marriage, but would subject the celebrant, as I have said, to penalty. The marriage itself is valid, but the celebrant is guilty of felony by the express enactment of the Act of 1844, not repealed by the Act of 1863. We did not ask the repeal in 1863. You will observe that the Act of 1844 states that "If any parties shall celebrate a marriage otherwise than in accordance with this Act, he shall be "guilty of felony." Those are the points, which I have stated to your Lordships, in which it would occur. I should observe with regard to the Presbyterian Church that one of the parties is obliged, before licence can be obtained, to declare that he is a member of the Presbyterian Church. He can obtain no licence till he does that. In the case of myself, for instance, I could not celebrate a marriage until I had produced to me a licence obtained on a declaration on oath that one of the parties is a member of my church.

1228. (*Lord Chelmsford.*) Do you think it would be a desirable thing to facilitate marriages of that description; marriages, for instance, where a Presbyterian minister celebrates it between a Roman Catholic and a Presbyterian, or a Wesleyan and a Presbyterian, and in the different instances you have

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given of marriages by ministers of different denominations?——As a general rule, I should say that unless it was attempted to pass one law that would be uniform to all parties, I do not know of any advantage likely to arise to any party by any change in the law at present, that is quite my judgment. I would not give greater facilities than exist for the celebration of marriage in the exceptions to which I have referred, for instance, I do not think I could ask the law to give me a right to marry two Episcopalians in the existing state of the law, that is, the general state of the law, I do not think I could ask that. I do not think it would be right for any party to ask that. As a matter of fact, the Established Church has a right to celebrate marriage with any party, but, also as a matter of fact, it scarcely ever happens.

1229. Do you think you might establish something of uniformity, at least so far as the civil part of the contract is concerned, by making each minister of religion of whatever denomination a local registrar for the purpose of registering marriages?——I do not know whether it would be within the limits of my duty to ask permission to state generally how I conceive a uniform law could be realized.

1230. We should be very much obliged to you. It is the very thing we are particularly anxious about?—— Then I would with great deference, and the consciousness of subjecting myself to the charge of temerity in suggesting upon so large a question as this, but since your Lordship gives me the permission, I would say that I think it is quite within our reach. Before saying that, and with reference to one of the questions raised by your Lordship, I should say that my firm persuasion is that if the Bill that was introduced into the present Parliament had passed into an Act, it would have created civil war in Ireland. If, for instance, a Roman Catholic priest were permitted lawfully, without notice, without witnesses, without registry, without respect to the age or nonage of the parties married, to marry a Protestant with a Roman Catholic, without any change in the law of the Roman Catholic marriages as it now stands, my firm persuasion is that in the north of Ireland it would have produced a civil war before 12 months. In illustration of that I should take the liberty of saying, for instance, suppose, as frequently happens, there is a Roman Catholic servant-man in the house of a respectable Protestant in Ulster, according to the proposed law the servant might run away with his master's daughter, and get married at any hour of the night or day, without the least notice, by the nearest Roman Catholic priest, and that would be a lawful marriage. If the law permitted him to do that with a Protestant, and that a servant, in the circumstances I have stated, did get the daughter of his master to run away with him to the next priest, and that he should marry them, the state of feeling in Ulster is such that I would have no hesitation in stating it on oath, if necessary, that it would produce a civil commotion within 12 months. Having stated that with regard to changes respecting particular denominations, I will just shortly, in a moment or two, state how I think a uniform law could be realized in Ireland. The three questions, as it seems to me, are,—the publication of notice, the celebration of the marriage, and the registration. Now your Lordship and the Commission are well aware of the machinery that now exists in Ireland for the issuing of licence and the registration of Protestant marriages. Take the registration of Protestant marriages by Non-conformists, there is a registrar-general and registrar appointed for different districts. The persons go to the registrar, they make a declaration on oath, or amounting to a declaration on oath, as to the particulars of the case, with respect to the age, and the absence of legal impediments, and such statements as would be made to obtain a licence. They give him the notice, he takes the notice, and he sends a copy of it to the minister of the parties, or to both ministers, if they belong to different congregations. That constitutes the publication of notice. In such circumstances we conceive that to be the most effective publication of notice that really exists anywhere. The old publications of notice, sending it to the board of guardians, became at last perfectly useless. Frequently, in fact, it was no notice at all, as it sometimes happened in this way. The board of guardians met once a week, the parties who wanted to send the notice knew the day, supposing the guardians met upon Tuesday, the party went upon Tuesday afternoon to the registrar to give his notice on the day. Before the guardians actually met on that day week the marriage was celebrated, and it never came before the board of guardians after the celebration. The notice which is frequently sent to the parochial clergyman is, in reference to the Church of England, very faulty in this respect, that where the parish is large and the population numerous, he really does not know the parties at all; but in this case, where the notice is sent to each particular minister of the party, then he not only has an opportunity of knowing the parties in his own congregation, but, in addition to that, his interest in the welfare of the parents and families of his congregation make it imperative upon him to see that no injustice is done, so that we conceive there can be no more effective method of the publication of notices than that which exists in this case. We conceive that that to all parties of every class and denomination would be the most effective publication of notice that could be well devised in connexion with or besides the publication of banns.

1231. (*Mr. Dunlop.*) Does each minister have the purpose of intended marriage proclaimed in his own church?——It is not proclaimed, but sent to him; the registrar receives and sends the notice. Suppose a member of my congregation is going to be married, he goes to the registrar, gives a notice, and makes the declaration; the registrar sends me a copy of it in a registered letter on the same day; then of course no marriage can take place in my congregation or among my people without my knowledge; then when it comes to me, if I have never heard of it before, I go to the parents of this family and say, do you know that this marriage is going to take place in your family. I have just stated not only is there the knowledge, but the obligation to give it practical effect.

1232. (*Lord Chelmsford.*) That would not do in populous parishes, because the minister would not be likely to be acquainted with the whole of his parishioners?——I have just said that at present the publication of notices in the most populous parishes is this: the surrogate sends the notice to the minister of the parish, which as I say, when it is a large parish with a numerous population, is in effect, in many instances no notice at all. The notice I have referred to would be a much more effective machinery for the publication of notice than any other that exists in Ireland for all parties. That is the first thing I take the liberty of stating to your Lordship and the Commission, with regard to the attainment of a uniform law.

1233. Will you forgive me for asking you whether after the registrar, for instance, has sent his certificate to you as the minister, there would be any publication?——None whatever; it is only the minister himself there is no publication of any sort, except by the proclamation of banns. In seeking to attain a uniform measure, I would still retain the proclamation of banns where the parties chose to have them. The difficulty would be that banns never can be very well taken as the only method of the publication of notice, because, for instance, it may sometimes happen that while I would be disposed to publish the banns in my congregation the other party might not be disposed to publish the banns in his congregation, and there would be instances where the publications of banns could not really take place; but in seeking to obtain a uniform measure, I would suggest that the publication of banns should be permitted to the parties where it can be obtained, and that the other should be what I have just stated to your Lordship.

1234. (*Mr. Dunlop.*) The publication would super-

the other?——Yes. Then with regard to the nization of the marriage itself: in all cases where gious service was held, which I should say in ld would be at least 99 cases out of 100, the ous service should be left to the choice of the ns themselves, without any statement as to what ony should be performed, that is, the parties d be left to choose the minister or service they rred; that would be the second part of what l seem to me to be a proper and uniform measure; the only question would be registration.

35. (*Lord Chelmsford.*) Do I understand you to , that supposing the parties, for instance, were of religious denomination, Wesleyan Methodists, it would be in the option of the parties to say hey would be married by a Presbyterian minister? Quite so; my judgment would be that when once erson has obtained a licence, that it would be then he party himself, so far as the legal machinery it would take no cognizance of his obligation to arried by this person or by that; that would be my notion.

36. (*Dr. Twiss.*) You propose that there should uniform system of proclamation or preliminary e?——Quite so.

37. And then that should be the business of the to regulate?——Quite so.

38. Then with regard to the celebration of mar-, it should be left entirely to the parties to choose own ministers?——Quite so. Then as regards tration, having thought of all the methods for ttainment of registration, what would seem to me the most effective method would be this, let the inery existing for registration exist, modify it so make it suit the whole community, by multiply- the registrars and diminishing the limits of the ct. I do not think it is a good arrangement to what are called superintendent registrars. I d prefer that nobody came between the actual trars and the registrar-general, that there should registrar-general, and that then there should be irars of districts, whether that district was a district or a parochial district, or whatever t be thought most facile for the purposes sought obtained. In some places the parochial arrange- would be the best, in some places the union gement would be the best, and in some places er the one nor the other would be sufficiently .

39. (*Lord Chelmsford.*) Instead of constituting local registrars, would it not be a desirable od in your opinion to make the minister who rms the ceremony the registrar upon each parti- occasion?——If you would permit me to say so, nk that would not be the most effective mode, g that the law did not take cognizance of the ious celebration at all, it would not be easy to ge a plan by which the State should take cog- ce of the registration in connexion with the ration.

40. Upon whom would you cast the duty of tering?——That is just the point I was coming I consider that the onus should be on the party g married, that is, should be on the husband, under lty. I conceive that it is hard to enforce regis- on upon the ministers by penalty; that it is a ult thing and probably scarcely a just thing to ore than bind them to what took place at the of celebration; that to bind them for a whole s of years to a whole series of acts, with regard he custody of registration books and things of sort, is hardly just to the ministers, and scarcely to the State. Of course it is one of the ways in ch it could be done, but it does not seem to me e the most effective method. I think the most tive method by far would be to take the registrar e at present exists. There is a good suggestion he recent Act passed in 1863, as far as it went, the registration of marriages, specially contem- ing marriages of the Roman Catholic Church; e is a good suggestion in it rather than an element of it, and that is, that the parties should go to the registrar and obtain a registration notice or a registration paper, which he brings to the celebrant, gets it filled up, and takes it back to him within a certain time under penalty. Now I conceive that that suggestion would be by far the most efficient system of registration; that when he gets the licence, as I have before stated, he should get it from the registrar in every instance; that he should give the notice, get the licence, and that along with the licence he should obtain this registration paper; that he should bring that to the minister at the time of the registration, that it should be filled up, signed by the minister, by the parties married, and by two witnesses, and that then the onus should lie, under penalty, upon the man who obtained it to take it back to the registrar, and that the minister should have nothing more to do than to fill it up at the time. That I conceive would be by far the most efficient method of registration, and that would meet the case of all parties. Then you would have a legal machinery entirely under the administration of legal authority for securing and for preserving the record of marriage.

1241. (*Dr. Twiss.*) What security do you think there would be that a party should not come to the registrar, and ask for one of these papers, and then have it filled up and take it back without any marriage having been solemnized?——He could not, for instance, sign the name of the celebrant to it of course but by forgery; that might be done under any circumstances.

1242. (*Mr. Monsell.*) Would you make the validity of the marriage depend upon the licence?——I would.

1243. That is to say, no marriage should be valid in which this licence had not been obtained?——No marriage should be valid without this licence were obtained.

1244. (*Lord Chelmsford.*) You see all this may be very good with regard to notice to the registrar, and the certificate from the registrar to the minister; but there are many cases in which the parties would prefer to have the publication of banns; that system would hardly apply to a case of that kind?——It would, without the least difficulty, because the party would then only have to go to the registrar and obtain the registration paper; there would be no difference.

1245. Where parties wished to celebrate a marriage clandestinely, of course you would have no hold on the man to compel him to register that marriage?——You have all the hold you very well can have in any case; he may forge the name.

1246. That is, of course, very easy in every case; but I was considering the case where you are providing for registration under a penalty upon the husband that after the celebration of the marriage he should be bound to register. Supposing he wanted to have a secret marriage, of course there would be no hold upon him to compel him to register that marriage?—— What I would do in that case is this: of course every registrar having issued his registration paper, it would be his duty to see that that registration paper was returned, and it would be scarcely possible to impose on the registrar; but then another part of the arrangement which I intended to suggest to your Lordship was, that the registrar should have an interest in seeing to the registration; that, for instance, he should have a small fee for every registration, and then it would be his interest to look after the matter. I am quite satisfied that no more efficient method of registration could exist than the one I have just suggested. The difficulties that would be in the way of securing a uniform marriage law on the principle that I have just laid down, I suppose, would be principally these: there is the question of *prestige* upon the part of those who are specially favoured, and there is the question of money, that might be affected by such a system as I have suggested; but I think both these difficulties could be met; for instance, if the registrar was not for every one particular class, but for all classes, his office would be a lucrative office; the fees that might be charged in such cases might be very small; a very

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small fee for each one of the purposes I have referred to would sufficiently remunerate the registrar; the expense would then be exceedingly small. This is touching the money question; and the expense of the notice of licence being so small, there would be nothing to interfere with the payment of a large celebration fee, which probably, so far as the money question is concerned, would meet the case to the satisfaction of all parties. I think it would do so. For instance, it frequently happens that ministers of all denominations, ministers of free churches in connexion with the Established Church, have no interest in the marriage question at all; it belongs to the parish minister, and I suppose that that sometimes applies to the Roman Catholic Church as well. I have no doubt that the money question could be met to the satisfaction of all parties on the principle I have stated. As to the question of *prestige*, the Established Church has so very little now that I am quite of opinion that the heads of the Established Church, as far as they are concerned, would be prepared to sacrifice any advantage arising from that, in order to the attainment of a uniform law. Then the principal difficulty would be with the Roman Catholics. The Roman Catholics having special privileges, of course would not be disposed very easily to relinquish them; but then in connexion with that they have special grievances; and it seems to me very likely that in the attainment of a uniform law the compensation that the Roman Catholics would receive, in the shape of raising them to a footing of equality with all parties in the celebration of marriage, would be sufficient to induce them, with a tolerable measure of willingness, to acquiesce in the abandonment of their special privileges with regard to hours and witnesses and places of celebration.

1247. (*Mr. Monsell.*) What reason have you to believe that the Roman Catholics would be satisfied with such a change as that?——None whatever, but the nature of things; I have no reason whatever, but what seems to me as of course. I reason thus: that they gain as much as they would lose.

1248. Is it a fact that in Ireland the disabilities under which Roman Catholics suffer with regard to marriages are very much complained of by them?—— I think rather.

1249. Of course you allude to the question of mixed marriages?——Of course; it is not their method exactly to express their views by public complaint, but the constant efforts being made in Parliament to redress those grievances, by those who represent themselves as taking a special interest in the Roman Catholics, led me to the conclusion that the Roman Catholics would very much like to have that grievance redressed.

1250. (*Lord Chelmsford.*) I understand you to object to making the minister, of whatever denomination, who performs the ceremony the registrar for that occasion?——Of course I object to it, as not being the most effective method of registration, for the reasons I have stated to your Lordship and to the Commission. I do not know that I have anything to add, at least of my own motion, except to say, that if a uniform measure is not thought practical, that if equality is sought to be obtained by any other method than uniformity, of course there can be equality secured by equivalents as well as by uniformity. I do not know of any Marriage Bill for Ireland that I think would be more likely to meet the exigencies of the case on that principle than the Bill which was brought into Parliament by the honourable member for Belfast and the honourable member for the University of Dublin in 1862. So far as I represent my own views and the views of my own denomination, I have no further interest in the question than what arises from seeking to obtain one law that would be uniform to all the country.

1251. The members of your religious denomination have no particular grievance arising from the present state of the marriage law of which they complain?——None whatever in Ireland; they were all redressed by the Bill of 1863, to which I have referred.

1252. I did not understand you to say that it w not feasible that the minister who performed a c mony should be the registrar, but that it would be desirable, and that the method you suggest is p ferable?——That is exactly what I have stated; it is feasible, but not so facile or so safe.

1253. (*Dr. Twiss.*) If the registration paper w obtained as you suggest from the registrar by person who was going to be married, by the fut husband, do you think there would be any objecti to that paper, when it was completed and filled being returned by the officiating minister to registrar instead of by the husband?——I think th would be a great hardship, for instance, to enforce returning of the paper by penalty on the part of minister. I do not think that unless it were return under penalty, you could rely upon its being return so surely as to make it a fit machinery for registrati I stated before that that plan was suggested by Bill that passed in 1863 for the registration of m riages. That I suppose specially contemplated Roman Catholics; it was I believe brought in persons who are now members of the Commission.

1254. Are you aware that it is generally suppos that in the case of those marriages there is universal observance of the law at present; that husband does not always return the paper?——I thi there are difficulties arising out of the peculiar c cumstances under which the marriage is perform which would suggest the likelihood of such a state things as you have referred to. I think in the case a uniform law those difficulties would not exist.

1255. (*Sir H. Cairns.*) What kind of difficult do you refer to?——The measure itself is profess a very partial measure, for instance, the celebrant laid under no obligation, except what he may c ceive to be a moral one, to fill up the registry paper all. One can easily enough conceive that in a gr many circumstances that paper would never be fil up, and there is no means of ascertaining where responsibility lies.

1256. (*Lord Naas.*) Do the clergy of your de mination themselves keep any registry of the marria they celebrate?——Yes; the present method of reg tration is the same for all, it is the same as is the c with the clergy of the Established Church and Presbyterians; the method of registration is unifo with all these parties, there is a registration book duplicate signed by the celebrant and by the witnes at the time, and once in three months a copy of it returned to the registry office.

1257. (*Sir H. Cairns.*) The book is supplied you from the central office in duplicate?——Yes.

1258. (*Lord Naas.*) And you keep the other bo in the chapel?——Yes. I have stated before that think the method of imposing the registration upon clergy is not the best, and it is scarcely fair; if y attempt to enforce it by penalty it is not fair at all.

1259. But you do it now?——I am not in the sligh est degree complaining as it regards one denominati compared with another; of course it is the law present; we are bound to do it by law.

1260. But it is objected to?——It is not an arran ment that any of us would like. I believe no de mination in Ireland likes that part of the arrangeme but of course we have no option.

1261. (*Dr. Twiss.*) Allow me to suggest, suppo the fee were paid to the minister, and when the h band went to the registry for the registration paper was required to pay the fees beforehand?——I did go into that part of the subject at all, for I was afr to occupy too much of the time of the Commissio but on that part of the subject what I would do wo be this: at present the registrar receives a shilli for receiving the notice; a shilling for every reg tered letter he sends to the parties, which may be o or three, as the case may be; he receives a shilling the certificate if the marriage is to be by certificat and he receives five shillings for the licence, if it is be by licence. That very barely pays him now. number being comparatively so small, but if he w

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...ssary for the whole population, then half those ..., and less, would be a large renumeration for him, ... would not allow him to charge more than six- ...e for the registration paper, which would be paid ...t the time that the registration paper was got ... with the licence, and there would be no charge ... when the person went back to give it in; that is ...way in which I would meet that case.

262. (*Lord Chelmsford.*) I do not know whether ... have at all turned your attention to marriages of ...leyan Methodists in foreign countries?——Yes, ...sarily so; I do not know what the state of things ...merica is. I believe there is one law for all par- ... in America, but our missionaries in all parts of ... world simply perform the ceremony of marriage ...he Non-conformists and Presbyterians of Ireland ... to do before the Act of 1844, conforming to the ... where there is any. Where there is no legal ...hinery, of course the legality of their marriage ...ld be tested by the peculiarities of the laws in ... country in which the marriage was celebrated.

263. (*Sir H. Cairns.*) You mean that your ...sionary would celebrate the marriage in the religious form that his people were accustomed to, but they would trust for the validity of it to whatever formalities the law of the place superadded?——Quite so.

1264. (*Lord Chelmsford.*) With regard to countries where we have ambassadors or ministers, have you anything to observe with regard to the marriage of Wesleyan Methodists in those cases?——There is some reference to our ambassadors at the courts of the different kingdoms where marriage is celebrated to our ministers in most cases.

1265. (*Sir H. Cairns.*) I suppose those of your denomination in foreign countries would not have their marriages celebrated in the ambassador's chapel?——No, never, so far as I know.

1266. (*Lord Chelmsford.*) I suppose there is no particular inconvenience with regard to these marriages?——No, none. I believe, as far as we are able to ascertain from our knowledge of foreign countries, the marriage law of no country is in so anomalous a state as that of our own.

1267. Have you anything further to add?——No, I do not think there is anything further.

Saturday, 9th June 1866.

PRESENT:

RIGHT HON. the LORD CHELMSFORD.	VICE-CHANCELLOR SIR WILLIAM PAGE WOOD.
RIGHT HON. the LORD NAAS.	TRAVERS TWISS, Esq., Q.C., D.C.L.
RIGHT HON. the LORD LYVEDEN.	ALEXANDER MURRAY DUNLOP, Esq., M.P.

LORD CHELMSFORD IN THE CHAIR.

DUNCAN MCLAREN, Esq., M.P., examined.

D. McLaren, Esq., M.P.

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268. (*Lord Chelmsford.*) You are a member of ...liament for Edinburgh?——I am.

269. I believe you have been Lord Provost?—— ..., for three years.

270. I dare say your attention has been called to the ...e of the marriage law in Scotland?——Yes, it has. ...ave often heard the matter discussed, and I have ...wn a good deal of its working.

271. Of course you are perfectly aware of the ...em first of all of regular and then irregular mar- ...ges?——Yes.

272. Has anything occurred to you with respect to ... state of the marriage law in Scotland which you ...re to communicate to the Commission?——I shall ...ery glad to answer any questions that the Commis- ...ners may put to me as to matters of opinion or ...ters of fact. I know some matters of fact which, ...he Commissioners wish, I will state as to clandes- ...e marriages, in which, as a magistrate, I have been ...erly concerned.

273. We shall be very happy to have any informa- ... that you can communicate, either as matter of ... or matter of opinion?——On one occasion, at the ...e I was chief magistrate of Edinburgh, this case ...se: A young lady from Birmingham had resided ...h her brother in Edinburgh, who was a dissenting ...inister; she was to be married, and her intended ...band came from Birmingham a few days before to ...married; he did not know, and none of the friends ...peared to know, that any residence in Scotland was ...uired for both parties, but when the marriage day ...ived they found that they could get no minister to ...rry them, because it would be illegal. Some friends ...m the Continent had come to Edinburgh to be ...sent at the marriage. The brother of the lady, who ...s a minister in Edinburgh, came to me and men- ...ned the circumstances which I have stated to the ...mmissioners, and asked me to marry them, under ... peculiar circumstances, to prevent the great in- ...venience which would otherwise take place. I had ...en been asked before in other cases but had always ...used; but I thought this was so peculiar a case ...t I should be justified in breaking through my rule, ...d I agreed to marry them. They wished me to go ... her brother's house to marry them there, it being ... usual rule in Scotland to marry in private houses. ...aid, No, I should not do that; if they wished me to act as chief magistrate of the city they must wait upon me in the council room of the city, and I would name a time when they could come with their friends and I would do what was needful. They came accordingly; the lady was nicely dressed, as if she was going to be married in a church, and several friends were with them. I put the question to each of them, "Do you declare that you are married persons?" and both of them answered that they did. I wrote a minute, stating that they had appeared before me this day, and declared that they were married persons; and I signed the minute or certificate, as chief magistrate of the city. Some of the persons present witnessed it in the usual way, and the couple went away apparently very happy. I have no doubt it was legally as good a marriage as ever was performed.

1274. Was it a legal and good marriage since Lord Brougham's Act, which requires 21 days' residence, or would it be before Lord Brougham's Act, which was introduced for the purpose principally of preventing Gretna Green marriages?——Yes. I do not remember the exact date of Lord Brougham's Act, but I was Lord Provost from 1851 to 1854.

1275. No doubt at that time it was a perfectly legal marriage, although the parties had not been resident an hour in Scotland. Lord Brougham's Act was subsequently introduced for the purpose of preventing marriages of that description, and requiring 21 days' residence. I suppose, although the parties you have mentioned would have been put to great inconvenience if the law had then existed, yet you do not object to that law requiring a certain amount of residence before the marriage can take place?——No, I do not. Another case in which I was concerned was where I thought moral considerations were involved; and that was my inducement to deviate from what I knew was the intention of the legislature, not to favour that kind of marriages. It was a young woman in service in my own family, a very respectable person, who was to have been married to a young man in two or three months, at what we call Whitsunday term, when they could get a house to occupy. She was found to be with child; my wife discovered it, and consulted me as to what should be done. It occurred to me, from what I had heard in many cases, that before the period for taking up house came the man might change his mind and have nothing to do with the young woman, and I was

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anxious to protect her. I spoke to her about it; she was very much distressed and ashamed, and I proposed that she should get the young man to come to my house the following evening and I would marry them. He came, not taken unawares in any way, for he was warned of the object, and he came nicely dressed in his best clothes. I put the same questions to them as to the former parties, and gave them a certificate of the same kind duly witnessed, that they had declared themselves to be married persons. I should mention that an inducement I held out to them was that I would retain the girl in my house until the time came for getting into the house which they were to occupy. Both of them had resided in Edinburgh, I believe, all their lives, therefore, there was no question about Lord Brougham's Act, although it was long after Lord Brougham's Act passed, in fact, within the last five or six years. I married them as a justice of the peace. I was not one of the acting city magistrates at the time, but was on the commission of the peace.

1276. We have heard that there has been a mode adopted for some time of registering irregular marriages by a party laying a friendly complaint before a magistrate, then the parties being fined, and a record being made of that fine. Has that been resorted to in your experience on any occasion?——Not within my own knowledge. I know that it has been frequently resorted to in Glasgow and other places in Scotland. I always had a strong objection to that mode of proceeding, because it was not honest, I think, and was a much more palpable figment than the more direct way I adopted. A case from Glasgow which illustrates another class of delicate cases, came within my own knowledge, and it may be useful that the Commissioners should have an opportunity of seeing the various considerations which actuate people in desiring these clandestine marriages. A person came from Glasgow with a young woman. They appeared to be in respectable circumstances. It was at the time I was Lord Provost of Edinburgh, and he told me his story to this effect. He said he was a widower, and the young woman who was in the adjoining room was the governess of his children; that she was with child by him; that he was anxious to marry her; that he was ashamed of his situation; that he would be willing to marry her publicly so far as he was concerned, but that the fact of a public marriage, followed rapidly by the birth of a child, would show what would be unpleasant to them that the public should know. He entreated that I would marry them and give them a certificate, and he could then say with truth that he had been privately married; and the world would have no right to ask anything about dates, and that her shame and his would in that way be covered. I thought the reasons urged were very strong; but still I felt in a great difficulty, because the persons did not belong to the town with which I was connected. At the same time I had great sympathy with the motive which actuated them, and I asked them to retire for a few minutes. While I was thinking what was best to be done, a brother magistrate came in, to whom I told their story and my scruples. He said that he sympathized very much with them, and that he had no scruples at all, and if I liked he would marry them. I felt greatly relieved, and said, "By all "means you shall marry them," and it was accordingly done. Those are the only three cases that I know personally of, but I have heard of a great number of such irregular marriages.

1277. Are you aware of a distinction which has been suggested to us between irregular marriages generally and clandestine marriages, as distinguished merely from irregular ones. I will tell you my reason for putting the question; it is, that it has been suggested that the plan of going before a magistrate and getting a record of the marriage and fine, in consequence of a friendly complaint, applies to clandestine marriages merely, and not to irregular marriages. In the course of your experience or any knowledge which you have upon the subject, are you aware of any such distinction?——No, I am not aware of it. I should say they were all irregular, and they were all clandestine; but I do not see how you could draw a line between them unless it be those cases where people live as if they were married, and make no pretension to having any cer ficate or anything of that kind. That is a differe class of cases altogether where there is no writing, witnesses to a marriage, nothing that can tangibly brought before a court if any dispute should arise.

1278. There is one description of irregular marriag where there is a promise given and then subsequ intercourse between the parties, which constitutes marriage, have you considered the effect of such marriage as that upon the morals of the people?—— have. In so far as my opinion is worth anything, am very much in favour of retaining the law as it in Scotland. I think the woman is the party th is taken advantage of; it is almost uniformly so. S is always the defenceless person, and I think the fe that cohabitation might be construed to be marria would prevent many people from entering into that ki of illicit connection. I fear that if it were declar that no marriage could be reared up following on th kind of intercourse, it would lead to many more those illicit connections than now exist, and, so far I know, that opinion prevails very generally in Scotlan

1279. You are aware that in these cases a writt promise is necessary. Do not you think that it wou tend to facilitate seduction? A man may make a pr mise of marriage, knowing perfectly well that he is n bound by it, because it is not in writing, and so indu the girl to yield to him?——Yes. No doubt it w have that effect in some cases, but if the intercourse go on, and he seems to act as if he were the husband, a they live together as man and wife, I suppose the cou will, in very many cases of this class, find that it equivalent to and constitutes a marriage.

1280. (*Lord Lyveden.*) Do you call that a clande tine marriage?——I should not call it a marriage at until a court had decided that it was one.

1281. When they have decided it is an irregul marriage, but surely it is not a clandestine marria where known cohabitation exists?——I think it is this respect that it very often happens that a man do not acknowledge the woman to be his wife before his friends. Very often the object is to conceal it fro some of his friends; and if that be the object, I thi it may properly be called "clandestine." If he avo it to all the world, then of course there is nothing cla destine in it.

1282. (*Lord Chelmsford.*) The writers mention third description of irregular marriage, that by hab and repute; but in point of fact that is merely eviden of a marriage. Parties are living together notorious as man and wife, although they may not actually ha been married, they are received by their friends, that called a marriage by "habit and repute," but, in fa it is the evidence that the parties have been previous married?——Yes, it is held to be so, although no ma riage ceremony takes place.

1283. In this case of irregular marriage there is necessity whatever for any registration of the marriag any record of the marriage to be made?——No.

1284. Do you not think it would be a most desirab thing to require that there should be some record of su marriages?——I think wherever there is any writin such as in the cases I have named, where the magistra has given a certificate that such was the case, I thi that those ought to be recorded.

1285. But would it not be desirable to require general registration of marriages of that description ——I fear it would be pretty much the same as abr gating the right to contract these marriages altogeth because, in the great majority of cases, there is so motive for concealment. The man, perhaps, does n wish his father or the world to know. He probab thinks it will be against his success in the world some way or other.

1286. Do you think in general it is desirable to e courage concealment?——No, it is not; but if the m has taken advantage of the confidence of the woman him and has seduced her, I think the law should do a thing that is reasonable to strengthen her position, a should not take from her any defence which she n has.

1287. I am not proposing that in default of regist

n the marriage should be invalid and void, but I speaking merely of the policy of requiring that re should be registration, in fact, of all marriages, l especially of these irregular marriages?——If the ne of the marriage cases which have acquired some ebrity, from having been litigated till they were ally decided in the House of Peers, be traced, I think will find that there was always a strong motive ged for concealment. There was the celebrated case Honeyman, a governess. If you had said to the y, "You ought to have registered the marriage, why did not you register it?" It might be answered The moment it is registered the publication is com-te, just the same as if it had been a proclamation banns, and then the gentleman would never have nade the promise when he knew that the publication was to take place the next day."

1288. The publication would not be a publication e the publication of banns, or anything on the church or, or in any public place, such as in the registrar's ce, but it would be an entry in the registrar's book? —That is patent to all the world.

1289. If people go to search for it?——Yes, and it mmediately talked about.

1290. (*Sir W. P. Wood.*) You kept no record whatr, I suppose, of the three cases you have mentioned? —No.

1291. Do you consider it to be beneficial to the man, and to strengthen her position, that she is to under the impression that a promise of marriage h subsequent cohabitation will effectuate a good rriage, though the promise may not be in writing, contrasted with our English system in which every man knows to a certainty that it is of no use to talk promises or anything of that kind, nothing but one is marriage. Which should you conceive of those two tems was better calculated to secure firmness on the t of the woman?——I think it is one of those ques-ns that can be best answered from the highest of all horities, "By their fruits shall ye know them;" and I nk the fruits of the Scotch system will favourably com-e with the fruits of the English system. So far as I ve heard there are more men, proportionally, living, London and Liverpool, Manchester and other Eng-h towns, with women as if they were their wives, an in any towns in Scotland.

1292. Do you think the cases of seduction are a very eat deal more numerous in England than in Scotland? —I do not know. I do not think there are any reli-le materials for forming an opinion. There is a popu-r notion that in Scotland they are more numerous, unded upon the returns of the Registrar General; but at is a most unreliable source of comparison, because Scotland every illegitimate child must be registered der very severe penalties. By the English law there e no such penalties, and a very large number of ille-timate children in England are not registered at all. the commencement of the Registration Act in Eng-nd, when it was understood to be imperative to gister all illegitimate children, I think, if the Com-ssioners would cause an investigation to be made, ey would find that the proportion of illegitimate ildren was much higher per cent. than it is now; d no one can believe that the number is really less r cent. now than it was then. In a word, I should y that in Scotland, literally every illegitimate child registered, and that in England a very large propor-n are not.

1293. (*Lord Chelmsford.*) Can you account for the cotch being so wedded to their system of irregular arriages when, as it appears, such marriages are very common. We have had evidence that the proportion tween regular and irregular marriages is about 20 20,000. There are so very few instances in which ese irregular marriages take place, that one finds it fficult to understand why there should be such a sire to continue the system?——Perhaps one reason ay be the Presbyterian notions which prevail in Scot-nd that marriage is not necessarily a religious ordi-nce, and I for one do not believe that it is. I was arried in the registrar's office at Rochdale. My wife eferred it, and I had not the slightest objection. I would just as soon be married there as in Westminster Abbey, or St. Peter's at Rome, or in a Presbyterian or any other church. When people hold that view of the law of marriage, which very many do in Scotland, I think the effect continues long after the abstract necessity for it ceases; and although one marriage in a thousand may be all that is really known to the world, by any public record, I doubt whether that record can be considered complete. I believe that among the poorer classes there are great numbers of those marriages arising from pecuniary considerations;—the large fee which is often charged by an officer called in Scotland, the session clerk, who charges 10*s.*, 15*s.*, and in some cases 20*s.* for the proclamation of banns.

1294. (*Sir W. P. Wood.*) He does not register them?——That is for the proclamation of the banns, which causes very little trouble and would be well paid by half-a-crown; but to pay 10*s.*, 15*s.*, and 20*s.* is a great hardship to poor persons, many of them in abject circumstances.

1295. (*Lord Chelmsford.*) That would be a regular marriage?——Yes, and I think that that payment is a great temptation to a kind of concubinage which is called marriage, and perhaps is intended to be marriage. I think if that arrangement were altered and some other mode of giving notice, apart from that, some simple way, such as by notice at the registrar's office, or something like the system which prevails in Ireland among the Presbyterians,—anything the Commissioners could devise of that nature, I think would strike rapidily at the root of the system which prevails among the poorer classes in Glasgow and Edinburgh and other large towns, of living together as married persons without being regularly married.

1296. (*Lord Naas.*) Are you speaking about the charges for registration or the charges for celebration? ——It is the charge for proclamation of banns; the minister does not get any of it. In every parish the minister and the elders are called the kirk session, and they appoint a clerk to the kirk session to note down anything that occurs. If a party wishes to be married, he goes to this clerk of the kirk session, who takes a note of the names; and on the following Sunday the clerk or precentor reads out at the beginning of the service of John Thompson and Margaret White's proposed intention of marriage. If it be read three times in one Sunday perhaps he may charge 20*s.* or 15*s.*, if on three different days he may perhaps charge 10*s.* or less. He really does next to nothing. After the parties have been married the minister fills up a printed schedule which he gets, mentioning the date, and names of the married persons, and they take this back to the session clerk, who enters it in the book that is kept for the purpose. If the Commissioners could devise some other system that would prevent the necessity for that extravagant payment of fees for the work that is performed, I think they would do a great deal of good.

1297. (*Lord Chelmsford.*) Does not the minister receive anything for the celebration of the marriage? ——No.

1298. The only fees are those paid to the session clerk?——Yes.

1299. (*Lord Naas.*) Is that amount uniform all over Scotland?——It is not.

1300. (*Mr. Dunlop.*) The practice is uniform, but is the fee not?——Not the amount of the fee.

1301. (*Lord Naas.*) Who settles the amount of the fee?——Nobody can tell. There is no law on the subject. One session clerk says, "My fee is 15*s.*;" another says, "it is 10*s.*;" another, "it is 20*s.*;" and if you challenge it he says, "My predecessors have "charged that, and if you do not choose to pay it I "shall have nothing to do with you, go away." It has come to that, that people do not dispute the charges. They cannot help themselves.

1302. Does that practice obtain equally in the Free Church as in the Established Church?——One of the great grievances of Scotland is that the proclamation of banns is confined to the Established Church; although we are Free Church, or United Presbyterians, or whatever we are, we have all to go to this session

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clerk of the Established Church. The banns are not proclaimed in our own churches, where we are known, but perhaps in some small congregation that is dying out, and thus the original purpose of publicity to the world is not served at all. If the notice was given to the registrar, I think this would do better.

1303. (*Sir W. P. Wood.*) The registrar's office ?——Yes, or even if stuck on the church door it would be worth something. This arrangement about banns irritates the people of Scotland. All ministers are equal in Scotland respecting the right to marry ; it does not signify what the denominatian is.

1304. (*Lord Naas.*) They can celebrate, but the publication must take place by the session clerk ?——Through the session clerk, and within the parish church.

1305. (*Lord Chelmsford.*) Does the session clerk attend for the purpose of publishing the banns ?——No ; he just takes a note of the names.

1306. Who gives them out in the kirk ?——The precentor reads it.

1307. Just as the congregation are going into the kirk ?——Yes, he reads the notice ; and the session clerk gives the party a slip of paper that they were proclaimed three times or once, as the case may be, and signs it, and they take that to any minister by whom they wish to be married, and the minister, seeing that, considers it a sufficient warrant, and marries them.

1308. (*Lord Naas.*) That cannot take place in a Free church or in a United Presbyterian church ?——No, not the proclamation of banns, and we consider that a very great grievance indeed.

1309. (*Lord Chelmsford.*) The higher fee is paid as a dispensation of the proclamation on three successive Sundays, and doing it on one Sunday ?——It is.

1310. You object to requiring the registration of irregular marriages, although it should not be essential to the validity of the marriage ?——Yes, I fear it would prove to be a less protection to those poor women that are in questionable circumstances ; but if any improvement as to registration could be devised, the principle of publicity is undoubtedly the right principle. It is a very hard case to go back after a long lapse of time to try to rear up a marriage by a great variety of minute circumstances, as in the case of the Yelverton marriage, which was tried, and where even the highest authorities in the House of Lords held different opinions, whether it was or was not a marriage. If you take the history of that case you will find that if the lady had insisted that there should be registration in some office of this marriage, Major Yelverton would at once have said, "No, I will not agree to that ; because "as I told you already I wish to conceal the marriage "from my relatives."

1311. (*Mr. Dunlop.*) Do you think there is any feeling in Scotland generally in favour not of those irregular marriages as specifically declared either before a magistrate or before a sheriff, but in favour of that sort of system that required to be gone into in the Yelverton case, proving it by a long series of various acts and course of conduct, extending over years on the part of two individuals ?——I think the only interference with the present state of the law which I could honestly say I would approve of would be, to fix a period of time within which, if a marriage was to be reared up by circumstantial evidence, that it must commence within that period—some reasonable specified period ; and if the lady and her friends allowed that period to elapse, that then they should be precluded from founding upon any acts that occurred before that period, other than what would be proved from written documents.

1312. From what point would you date the running of that period, particularly in such a case as the Yelverton case, or any other which spread the proof over a long period of time ?——If the period were fixed, there should be no liberty given to go back beyond seven years, I think ; and it is questionable whether so long a period should be allowed.

1313. Seven years from what ?——If an action is raised, you are not to go into any matter of proof that occurred more than seven years before the action is raised, unless you can produce written documents. I have no particular theory about seven years more than any other number. There is an analogous case in principle, now before Parliament. There was a Bill regulating lunatic asylums in Scotland which passed the House of Commons the other day. A case had occurred in Edinburgh, where an action was brought against a medical man, after the lapse of 12 years, for having improperly signed a certificate by which a gentleman, alleged to be quite sane, was confined, and it led to a most protracted, expensive, and harassing litigation. It appeared at the end of the case that the party had been legally confined,—that he was insane. The College of Physicans and the College of Surgeons in Edinburgh thought that this Bill afforded a good opportunity for altering the law. They asked me to present petitions, praying for an alteration of the law, and the result was that a clause has been added to the Bill, by which any action of that kind raised against a medical man for improperly signing such a certificate must be raised within twelve months from the period when the person is liberated from the asylum. Every member I spoke to about it thought this a very reasonable proposal ; that it was quite unjust to keep alleged misdeeds hanging over the heads of medical men for such a long time, for the discharge of a medical duty ; and in the particular case referred to some important witnesses were dead, which rendered the hardship greater. I do not put that as a parallel case in all respects, but merely to show there may be reasons for drawing a line as to the time when actions may be brought.

1314. I think we have pretty well exhausted all the considerations with regard to irregular marriages. With respect to regular marriages, is there anything that you think requires alteration, either as to publication of banns or as to registration ?——Nothing, except that I think there should be a uniform fee, of small amount, fixed in every parish in Scotland by Act of Parliament for proclamation of banns. I think half-a-crown or 5*s.* is quite sufficient.

1315. For the publication of banns ?——Yes, for the fee to the session clerk ; there is no separation of the fee. He does the whole thing ; he enters the marriage into a book. And I think there should be an opening given to those who do not choose to go to the session clerk, by giving them some equivalent benefit, such as allowing them to give a notice to a registrar ; or doing something equivalent to the system which exists in Ireland, and as to which I understand there is a gentleman now waiting to be examined, who can give the Commissioners information about the system which exists among the Presbyterians in Ireland. They are not required to have proclamation of banns in the Established Church ; the whole thing is done in their own churches, and done properly, regularly, and systematically.

1316. (*Sir W. P. Wood.*) Except the exceptional case which you would still reserve of what have been called clandestine marriages, would you desire that all the regular marriages should be registered at the registrar's office ?——I think it would lead to additional expense. You would require to give an additional fee if that were done, and every parish has already a record for itself, as I have described. All the marriages within the parish are registered there, and it is a book of easy access.

1317. Who preserves the book ?——The session clerk, who is the parish registrar.

1318. Is it handed on from one session clerk to another ?——Yes ; and many of the kirk sessions have had a succession of those volumns for two or three centuries.

1319. Is it preserved at any public place ?——No, not the volumes in use.

1320. Is it at the private house of the session clerk ?——Yes, or in some chest belonging to the parish kept in his house. There were regulations made under Act passed a few years ago for bringing all the complete volumes of these records up to the general register office

Edinburgh after a certain date, but I cannot speak to details of this arrangement.

1321. Would the session clerk have sole control ing his period of office, so that it might be left to n alone to allow people to inspect it or deal with it? —Yes, I think he would have the whole control of volumes in use.

1322. There would be no protection of a public ce; it would simply depend on the respectability and racter of the clerk?——Yes, but under the control of parish, and subject to public inspectors.

1323. (*Mr. Dunlop.*) Are not these records now nsferred to the registrar of the parish?——Yes, but I have just been saying, I cannot give the particulars. e session clerks were, by the first of the Acts re- red to, declared to be parish registrars in country ishes. There is a date fixed after which all these oks must be sent to the general record office in inburgh.

1324. (*Lord Chelmsford.*) The books themselves, or opy of them?——I think the books themselves, and t the other party gets a copy from the public office, t I am not competent to give the Commission in- formation on that subject, and I would rather not speak as to it.

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1325. (*Mr. Dunlop.*) But the records are really superseded now, I think, by the new system?——I think the session clerk, who is also parish registrar, still records marriages in the same way he formerly did. I think there is no other way of registering them, as far as I know; but I have not been inquiring into that question of late, and I would rather the Commissioners did not take my evidence on that subject.

1326. (*Sir W. P. Wood.*) Would there be any great objection to his being made a sub-officer, as it were, of the registrar, and so translating him to that capacity? ——Edinburgh is divided into six of those registrar's districts for general registration purposes; but I think the marriages are not recorded by them, but by the session clerks, who are separate and distinct officers. I have never inquired minutely how the work is divided. I merely know that session clerks have been made registrars in country parishes for the purpose of avoiding complexity. As I said before, I should prefer that the Commissioners did not take my evidence on that subject, because I have not inquired carefully into the details.

The Rev. JOHN SCOTT PORTER examined.

Rev. J. S. Porter.

1327. (*Lord Chelmsford.*) What religious denomina- n are you?——I am a minister of the non-subscribing esbyterians, and one of their professors of theology.

1328. At Belfast?——At Belfast. I am also a ensing minister under the Marriage Act of the 7 & 8 ctoria, for the Presbytery of which I am a member.

1329. Of course your attention has been frequently ned to the state of the marriage law with regard to ur religious denomination?——I have been obliged make myself as familiar with it as, I suppose, most ople are; and I may add that having been appointed retary to a marriage law committee, which was rmed in Belfast, the president of which is Dr. Bryce, o I believe has been examined before the Commission, have had my attention still more frequently directed the subject.

1330. Is there anything in the state of the law which u have to complain of, as far as regards your religious nomination?——As far as regards my own religious nomination we are among the favoured classes; there therefore very little of which we have to complain on r own part. I must state, however, that in some cases convenience is produced by the law requiring persons ho are going to be married, (if they wish to be arried by licence in our churches,) to come to me as licensing minister, sometimes from a considerable stance, in order to deposit the needful certificate from eir own minister; and after the lapse of a certain time make a declaration before me, that the facts stated in eir notice are true, upon which I am empowered to issue them a licence. Now from the nature of the case it appens very often that I know nothing whatever about ese parties. They are perfect strangers to me. I cept the notice, I take it upon the authority of my other minister who has signed it; I issue the licence the ground of his statement, and also upon the eclaration of the parties themselves—a declaration hich the Act of Parliament makes equivalent to an ath; or it may be actually on oath, for I am em- wered by law to administer an oath if I think it ght. Now not knowing anything at all about the rties, I do not think I am the proper person to ad- inister the licence; I think it should be done by the inister of the congregation who knows them. I have nly had one instance of a caveat being lodged after otice had been given to me. That caveat came rectly, I may say, from the minister himself, who had gned the notice. In the interval between sending me his rtificate and the time required for issuing the licence, e had found that a very improper marriage was going take place, in fact, a bigamous marriage; and he rote me a letter on the subject, and got the wife of e man (who had been previously married) to lodge a aveat with me. This shows that it is the local minister ho, knowing the parties, their connexions, &c., ought be the responsible person.

1331. He was not aware of the fact at the time he granted the certificate?——Certainly not.

1332. The delay which was necessary in obtaining the licence led to the discovery?——Decidedly; and therefore I am favourable to delay. Unquestionably, I think there ought to be a considerable delay between the time when the parties give the notice of intention to celebrate marriage, and the time when the marriage may be celebrated by law.

1333. What sort of delay does it occur to you would be right?——I think nothing less than a week, at all events, perhaps even a longer period might have its advantages. Certainly I should say a week should intervene between the expression of the intention to marry, and the time when the marriage could be legally celebrated.

1334. In the case which you have mentioned, is any publication necessary?——I believe the entry of the notice in the marriage notice book of the congregation, and the deposit of the minister's certificate with the licensing minister, are considered in the eye of the law as a publication; but really the transaction is quite private. There is a notice book kept in each congregation, in which parties intending to enter into matrimony have to enter their notice in the form given in the schedule to the Act. This notice book however is, generally speaking, kept either in the vestry of the congregation under lock and key, or in the minister's own private residence; and it is not much consulted. I do not think it is ever opened except for the mere purpose of entering notice. When the minister's certificate is brought to me as licensing minister, stating that a particular notice of marriage has been entered, and that application will be made to me for a licence in proper time, I am required by law to transcribe it into a book which is furnished to me for the purpose by the registrar general, and I do so; and if any person likes he can come to me for that book and inspect it. I never would refuse permission to inspect it, but in point of fact I never have been asked to show it, so that really there is no publicity at all given to the notice.

1335. Does your licence then enable any minister to celebrate the marriage, or must they go back to their parish again from whence the certificate proceeds? ——The notice states the particular meeting-house in which the marriage is to take place; the parties must be married there and nowhere else. I have no authority to grant a licence for the marriage to take place anywhere except in the place specified in the notice.

1336. Is not the licence generally to celebrate the marriage where the minister who granted the certificate resides?——Almost always; in some particular cases not so, but *almost* always.

1337. After the marriage has been celebrated, is any record of it made in any way?——Yes, the minister is obliged, under pain of felony, to register it, and see

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it registered immediately or a short time afterwards in duplicate in register books furnished to him for the purpose. These two register books are kept in his custody until they are filled up, after which one copy is deposited with the registrar of the district, the other remains in the congregation for reference. Besides this, every minister is obliged to send to the registrar of his district a copy of the particulars of all marriages that have been celebrated in his church, during the preceding three months.

1338. (*Lord Naas.*) To the registrar general?——To be forwarded to the registrar general. I conceive that, in reference to the celebration of marriage, in all cases the preliminaries ought to be simple and well known. Now that is not the case by the existing law. Take the town of Belfast, for example. I should suppose there are, speaking moderately, about 30 places in the town of Belfast in which notices of marriage may be entered. Supposing a gentleman heard that his daughter was going to be married to his footman, he would be obliged, in order to enter a caveat against that marriage, to make searches in 30 different notice-books, all of them kept in private places, and the owners of which are not obliged to be present at any particular time or place. I conceive, therefore, that in every marriage district there should be one office in which all notices refering to all kinds of marriages in that district without exception should be entered, and where all persons would have an opportunity of consulting them, for the purpose of interfering, if they chose, to prevent anything improper or illegal that was going to be done. That being the case, I conceive it is right and proper that the marriage should take place after the lapse of what would be regarded as a sufficient time to give interested parties an opportunity of interfering. I think that a marriage might take place in any church or chapel, and by any minister or clergyman of any denomination which the parties themselves preferred. I am may state that one reason why I am induced to recommend a considerable delay in the interval between entering the notice and the celebration of marriage is this, that parties have, in several instances come to me with certificates from their ministers applying for a licence to be married. I have transcribed this into my book, and I have made out the form of declaration to be affirmed and the form of licence for those parties, in accordance with the certificate lodged with me, and they never came for it. In several instances that has been the case. The fact seems to be that they found they were doing either an improper or an imprudent or a rash thing, or they had been dissuaded by friends from entering into the connexion which they were about to form, and therefore they did not prosecute their purpose. Now it is quite plain that if these parties had had the option of going to a clergyman of any denomination, a presbyterian minister, or a protestant clergyman, or a catholic priest, instantaneously, and getting themselves then and there married, they would have been married, and the evil, or what they afterwards judged to be an evil, would have been done past remedy; whereas a little delay, by affording time for reflection, may have prevented the consummation of what to one or other, or perhaps to both, would have been a great misfortune.

1339. (*Sir W. P. Wood.*) In what way did you delay it?——I did not delay it at all; the law delayed it. The law require that the minister's certificate of notice having been entered shall have been in my hands for a week before I have power to grant a licence. At the end of that week one of the parties must come to me and make a declaration, stating that the particulars stated in the notice are true. During that interval the parties, or one of them, came to say that it was better the marriage should not go on.

1340. (*Lord Chelmsford.*) Suppose you had what you have suggested, one local registrar, do you not think it would be desirable that the minister who celebrates the marriage should make an entry of it, and transmit that to the registrar?——Most undoubtedly, I speak of a local notice, or an office for notices. Undoubtedly the minister should be obliged to make a full record of it and trasmit it to the registrar. I think the law as applicable to a presbyterian marriage is in principle a fair one. The minister is obliged, as I have stated, to make the register in duplicate, both copies of which are originals. They are signed by himself, by the parties, and by two witnesses at the time of (or immediately after) the celebration of the marriages; the within three months he is to send a transcript of that to the registrar general, and when the book is filled one copy of the two original entries goes to the registrar's office; the other is kept for reference in his own church.

1341. You have found that system to work extremely well?——It produces no inconvenience in the world. I am aware that some persons, some of my friends, more especially those who are acquainted with Scotland, object a good deal to the requirement of previous notices and other preliminaries which I think are necessary; and I am not prepared to deny that in some particular cases great inconvenience may be produced by the necessity of entering those notices; and perhaps the remedy for evils that have already taken place may in some cases be prevented by requiring them. I apprehend, however, that it will be difficult to frame any law which will not produce grievances in particular cases. I think the object of legislation on this subject should be to establish that which shall be most for the public morality and the public good, and to secure to all parties their rights under any marriage that has been legally celebrated; and if a measure be calculated to effect these objects, the inconvenience which may arise from it in rare and exceptional cases must be submitted to for the general good.

1342. Is there anything further which occurs to you upon this subject?——There is one thing which I shall take the liberty of mentioning: the clergymen of the Established Church have in Ireland, and I believe in England, the power of celebrating a legal marriage between any parties whatsoever who may come before them after the proper preliminaries have been observed. The law does not require that the parties shall be members of their own communion, I consider this a very great convenience and advantage. I may mention a particular case in which two members of my own congregation,—members of my own church,—persons to whom I was much attached, and who were much attached to me,—were about to be married. The mother of the lady wrote to me a note stating that such an event was in contemplation, and that they were desirous of being married by me as their pastor and their friend; asking me also to put them in the way of having the marriage properly celebrated. I waited upon the family; they lived upwards of six Irish miles from the town of Belfast, where my meeting-house is situated; I suggested that it would be exceedingly inconvenient for the parties, and the members of the family who were to be present at the wedding, to go six miles to the meeting-house, and then, with other relatives and friends, to drive six miles back to the *déjeuner*; and I recommended them strongly to be married in the parish church of the district, which happened to be in the immediate neighbourhood of the young lady's residence. At first there was considerable reluctance to do this, they were all anxious that the marriage should be celebrated by me; but my advice at last was taken, and they were all, I believe, very well pleased that the advice was given and taken. Now I think that a similar convenience would very often be experienced if ministers of other denominations enjoyed the same right.

1343. Cannot that be by law now?——I think not. Certainly as regards Presbyterians it cannot; one of the parties to be married by a Presbyterian minister, under the Presbyterian Marriage Act, must be a Presbyterian. With regard to other denominations, I believe it may be done as regards the place; but I think the Act specifies that it must be done by a clergyman of the denomination to which one at least of the parties belongs. The Act specifies that it must be by a minister or clergyman of the denomination of one of them. I think it would be right so to modify the law, that if the clergyman mentioned in the notice happened to be sick or absent, and happened not to have a brother minister of his own denomination quite at hand, he

t procure a clergyman of another denomination to
e duty for him. As the law now stands, if he
to ask that clergyman of another denomination to
at duty for him, the marriage would be illegal.
44. No, the marriage would not be illegal?——
act of celebrating it would be illegal, at all events.
45. By the 7 & 8 of the Queen, Presbyterian
ters, after the 31st March 1845, may celebrate
ages between competent persons, one or both of
shall be Presbyterians; but it provides that no
nce on this point shall be adducible, should the
iage be questioned, so that it is an illegal act, but
n invalid marriage; it is a misdemeanor?——I
from, then, in saying the marriage would be void.
46. (*Lord Naas.*) However the act would be ille-
——Yes; the act of celebrating it would certainly
illegal act, and, I should suppose, punishable in
way, if knowingly done.
47. (*Mr. Dunlop.*) Do you see any necessity for
ng up the requirement of the parties who are to
arried by you coming to your place of worship?
I do not.
48. Might not you with perfect safety be allowed
to their residence and marry them there, instead
e whole company coming six miles into Belfast?
I prefer publicity of celebration, in order that any
n who has a right to interfere to stop an improper
iage should have full opportunity of doing so at
ery last moment; and I think that that right is
likely to be exerted when the ceremony takes
in a church, a chapel, a meeting-house, or other
tered place, than in the private dwelling of the
es. For the same reason I should object very
to the hours during which marriages may be
rated being left indefinite. I believe the law of
land allows a marriage to take place at any hour of
lay or night.
49. And in any place?——And in any place. Such
e case also with regard to Roman Catholic marriages
eland. I think it is a very great grievance indeed.
50. (*Lord Naas.*) The hours are from 8 to 2 now,
they not?——From 8 to 2 in Ireland for those
iages which are under regulation. There is no
iction of time or place with respect to Catholic
iages.
51. (*Mr. Dunlop.*) Do objections at the very last
ent occasionally take place to the celebration of
iage?——I have never known an instance of it;
I think it is a case to which the law should apply.
ve never known a case of banns being forbidden,
f celebration of marriage being stopped.
52. Is any residence required for any period before
notice is given?——In the case of Presbyterian
iages one of the parties must have been resident for
month.
53. Does that apply to a Presbyterian from Scot-
?——Yes, a Presbyterian from Scotland going into
nd to be married. I am speaking of marriages by
ice. In all such cases, one of the parties must have
resident for one month—the party that has served
notice. [I see I am wrong; the party must have
a member of the congregation for a month, but
t have been resident for a fortnight.] The form of
ice is given in schedule C to the Act 7 & 8 of the
en.
54. If one of the parties is in a position to give
notice, the other may come the day before the
riage?——Yes. The Act of Parliament does not
ire any residence in the district in the case of the
r party, however his residence must be stated. I
not know whether I ought to mention to the Com-
ion what they are probably aware of, that two bills
e been introduced to the House of Commons this
ion upon the back of which appear the names of
eant Armstrong and Mr. Brien. Both of these
are for the purpose of enlarging the powers
present possessed by Roman Catholic priests;
ng in fact to the Roman Catholic priests what the
does not now give, namely, not only a power of
brating mixed marriages, but marriages where both
ties are protestants. To that, it will be clearly
from what I have stated, I have not the least ob-

jection; *provided always that Catholic priests are put under the same restrictions as regards previous notice and specification of time and place, and also compulsory registration, that are obligatory upon clergymen of the Established Church, clergymen of the Presbyterian denomination, and of all other communions.* With this proviso I have not the slightest objection, in fact like it, because it would take away what is felt, if not as a grievance, at least as something of the nature of an insult on the clergy of the Roman Catholic church.

1355. (*Sir W. P. Wood.*) You of course desire that the same privileges should be extended to the Presbyterian minister?——I wish that all denominations should be on a perfect equality in respect of the celebration of marriage. The present law does not require previous notice of a marriage in the case of a marriage to be celebrated by a Roman Catholic priest. All that the Act specifies is that one of the parties intending to be married shall go to the registrar of births and deaths in the district; *he, observe, is not the marriage registrar,* but a registrar under the Act for registering births and deaths; one of the parties to the intended marriage is required to go to him, and get a blank form of *registration.* That blank form the registrar is required to fill up, if the party asks him to do so; that is to say, he is to put in names, &c., but the person applying for that paper is not required to give to the registrar his name, nor the name of the other party, nor the name of the priest, nor the name of the place where the marriage is to be celebrated; nor to state the time when it is to take place? nor is any interval of time required to elapse between the procurement of the blank form, and the performance of the ceremony. He may get that paper perfectly in blank, and he may take it instantly to the priest, and the priest can upon the spot celebrate the marriage. Such marriages are often celebrated at very late hours, and I have heard of their being celebrated under circumstances that are most objectionable, one at least of the parties being the worse for liquor.

1356. (*Mr. Dunlop.*) And that blank sheet operates as a licence for instantaneous marriage?——That is all the licence that is required. The man is punishable by a fine of, I think, 10*l.*, if he does not bring that paper with him, and if he does not bring it back to the registrar; but there is no penalty whatever upon the priest for celebrating the marriage without it; nor anything to compel the priest to sign it, if produced. Now it is, I do not say hard (because I think it is for the public good), that I should be liable to the punishment of felony if I did such things in that way; in fact, the Archbishop of Canterbury or of Armagh dare not do so; but a young Roman Catholic priest fresh from Maynooth is entrusted with this power at present, with respect to marriages between persons both of whom are Roman Catholics; and it is now sought to confer upon every priest the same unlimited power in celebrating marriages between protestants. I object to such a marked distinction between churches, because it is not agreeable to the principles of religious equality. In regard to marriages, I do not wish for any protestant ascendancy, still less for any Catholic ascendancy. If the contemplated bill pass into a law, it will throw the marriage of the lower ranks almost exclusively into the hands of the priests; for there is a great objection to delay on such occasions.

1357. (*Lord Chelmsford.*) Does any thing further occur to you on this subject?——I should think it would be well, in any further provision that may be made as to the law of marriage, that the Commission should very distinctly consider the propriety of requiring the proclamation of banns. I for my own part look upon such proclamation as an indecent interruption of public worship. I believe it very often sets members of the congregation tittering and laughing; and sometimes making inquiries of one another. Cases sometimes occur in which the parties have been the subject of talk, occasionally of scandalous talk, in the neighbourhood for weeks previously; and their knowledge that such has been the case may have a tendency to lead them to dispense with matrimony altogether rather than submit to the proclamation of banns. It is also my idea that

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in large civic and suburban parishes banns do not answer the purpose of publication, for the names are read over in a long catalogue, and you might as well take the roll of the first troop of the Horse Guards, and read it over to the people, for all the impression that it makes.

1358. That publication takes place before the service begins, does it not?——No. It occurs in the middle of the communion service.

1359. You have no publication?——We have the power of marrying by banns; but the feeling of the people, especially of the females, is so very strong against it, that I think there have been hardly any Presbyterian marriages celebrated by banns since this Act was passed. In almost all cases, Presbyterian marriages are by licence; even labouring people take out licence. They will leave their work and come a day's journey, which costs them something, and pay the fee for a licence, which to them is considerable, rather than have their names proclaimed in church.

1360. (*Sir W. P. Wood.*) What mode of publication would you suggest?——I have already suggested that there should be an office in each marriage district in which all those notices should be entered, and no minister should be allowed to celebrate marriage unless he got from the registrar a certificate that the notice had been, for the prescribed length of time, entered in that book, and accessible to all parties, and that no caveat had been entered.

1361. You would not put it up in the office, but you would simply have it in the book that anybody might have access to it?——Upon that point I am somewhat doubtful. It is a point to which I have not paid very much attention. As at present advised, I think that entering it in a book is sufficient, provided the book is properly indexed.

1362. (*Mr Dunlop.*) When notice is lodged with you, and one of the parties is not a member of your own congregation, are you in the habit of sending an intimation to the minister of the congregation to which that party belongs?——I am not.

1363. Do you not think some such proceeding would be very available for effecting the purpose for which notice is given?——I think it would be a piece of courtesy, and now that my attention is called to it, I shall be likely to do it.

1364. Would it not be available for the purpose for which notice is intended to be given?——I think it would.

1365. That information should come to the ears of those interested?——I think it would; but in that case it would perhaps be better that the information should come from the registrar to whom the minister's certificate would have been transmitted, according to the suggestions already made.

1366. Excepting that that would lay it on him as a legal obligation in which he has no interest, but you, as a clergyman, would be disposed to do it as a right and proper thing in itself?——The fact of the matter is that if the plan I recommend were adopted, the registrar would receive notice, in time, to put all parties interested upon their guard; whereas the celebrating minister may happen not to hear of it until a day or two before the time fixed for the performance of the ceremony. Such is now the case with respect to marriages celebrated in other congregations than those in which notice has been entered.

1367. I am talking now of the notice that is entered in your congregational book?——As a licenser?

1368. No, not as a licenser; but I think you said in every congregation there is a book kept in which a notice is entered, and a copy of that notice is sent to you from the minister of the congregation where it is entered?——That is so.

1369. What I was thinking of was an intimation to be given by the minister?——The licensing minister?

1370. No, the minister where the notice is lodged. I suppose one of the parties will always be a member of his congregation?——The law requires that.

1371. Then the one that is not, the minister in whose book the notice is entered, that he should intimate to the parents or friends of the other party who is not a member of his congregation that such a notice h... been lodged?——That is quite right, and if the sy... of notices for Presbyterian marriages is maintain... and extended to the other denominations, I should ... that the provision would be a very proper one.

1372. (*Sir W. P. Wood.*) If parties appeared to y... manifestly to be under age, I suppose you would ma... some inquiry on the subject?——No case has ev... occurred within my experience in which it was necessa... to make any inquiry. The notice requires to spec... whether the parties are of age or under age.

1373. And to make a declaration to that effect?—... And if married by licence, one of them must make ... declaration that they have obtained the consent ... whatever person is authorized to give or withho... consent.

1374. Does it occur to you whether it may b... desirable, instead of that declaration, simply to requi... the consent in writing of the person whose consent ... necessary?——It would be a much better provisio... and I would make the penalty for producing a false ce... tificate of consent very severe, the same as it is now f... making a false declaration. For making a false decl... ration the penalty is the same as in the case of perjur... and for bringing a false certificate of consent I shou... make the penalty certainly not less severe.

1375. (*Lord Naas.*) You have said that you thoug... that a mere entering of the notice of marriage in the boo... would be sufficient publication?——That was what ... meant to convey.

1376. (*Lord Chelmsford.*) Properly indexed?—... Properly indexed.

1377. (*Lord Naas.*) And in fact that the publ... should have no notice whatever of it, unless they cho... to seek for it; that would be the result of your pla... would it not?——It would; unless a supplementa... formality were brought in for marriages that are to b... celebrated in the district registrar office; at presen... the district registrar as soon as he gets notice is oblig... to send a copy of it to the minister whom the parti... specify as the minister to whose congregation they a... attached. I can see no objection to that being done ... the case of all notices entered in the registrar's book.

1378. Then in that case the ministers of the parish ... to whom the parties belonged would really be the on... persons who would be aware of the intended marriage ——It might be required that, in the case of their bei... manifestly young persons, notice should be sent to the ... parent or guardian, if such could be found. I ma... state, however, that I believe parties very often impo... upon the registrar in that particular. I have g... notices from registrars of parties having signified the ... intention to be married, who had entered themselves ... members of my church and my congregation, and ... under my ministry; but who were not so at all. N... longer ago than, I think, last Tuesday, I got a notice ... that kind from our registrar in Belfast, who is a ve... regular and proper officer, quite as correct as any ma... can be. I was obliged to write to him (for I had n... time to wait upon him), that the parties named in t... notice were not, and never had been, members of t... congregation under my pastoral charge; and that ... his celebration of the marriage depended in any degr... upon the accuracy of that statement, I warned hi... that he had better not perform it.

1379. Do not you think the publication, even for a ve... short time previous to marriage, would be a very goo... mode of preventing any evil of that kind, and wou... be a check upon it?——If by publication is meant t... sticking up of a notice of marriage in a public plac... I recollect very well that it was tried in England und... Dr. Phillimore's Act, and the result was, that it near... put a stop to marriage altogether; people cohabite... especially in the manufacturing districts, without an... marriage; and it did an infinite deal of evil. Aft... the experience of, I think, one year, the Act had to b... repealed; it was found to be so contrary to the sen... ments of the people. Girls would not have their nam... pasted on the church door, to be the subject of impe... tinent and jeering remarks from any idle or malicio... person who chose to comment upon what was going ... take place.

0. Is there really a great dissimilarity of pro- now among the dissenting communities in the of Ireland, with regard to marriages among ant dissenters?——In the form of celebration, I think there is; but in the preliminaries to the tion there is very considerable diversity.

1. Do you think that it is an evil?——I do , a very great evil; and as one of the privileged , I should petition that the evil should be reme- nd all special exemptions or special provisions of nd done away with.

2. Presbyterians proper have a freedom of action to marriage which is not extended to nters and other protestant dissenters?——That fact.

3. Do you think that the Presbyterian bodies lly would object to the freedom which they enjoy extended to these other communities?——In no would the Presbyterian laity, as I conceive, object freedom which they enjoy being extended to communities, provided that the laws existing as s themselves were in their essential provisions ued. I will not mislead the Commissioners by them to suppose that there would not be on rt of several Presbyteries a very strong objec- do away with the privileges which they now . The licensing ministers are a very influential n the Presbyterian church, and I should think ould object very much to having their fees cut

4. Would they object to this; that the number nsed ministers should be increased; because what ve stated to day is corroborated in a statement often heard, that these licensing ministers are fficiently numerous, and that there are difficulties in the way of obtaining licences in that way are objectionable?——I may state that that point een before the Presbyterian public very lately. eneral assembly of the Presbyterian church in d, as it is called, of which I am not a member, ely been held in Belfast; and in the report sent n one of the Presbyteries, as I judge from the ent which was made in the newspapers of the n application was made for the enlargement of mber of licensing ministers; but after a consider- iscussion I think the proposal was rejected.

5. It rests entirely with the governing bodies of esbyterian communities as to the number and tment of those officers?——Subject to the appro- of the lord-lieutenant.

6. That is really as regards the person and not as s the number. I believe the Government had no to insist on a certain number of licensing mini- ——No, but still the Government have recom- d. I recollect very well that when the Act of 1844 into operation the Presbytery of which I was a er applied to have three licensing ministers, e it was a very widely scattered body, some of its gations being situated at one extremity of the of Down, others extending widely into the of Antrim; for the purpose of local convenience recommended that three licensing ministers should pointed for that Presbytery. We sent up our mendation and we got, I think it was from the secretary, a letter stating that he had referred the to the registrar general, and the registrar general iven to him a list of other Presbyteries, each of contained far more congregations than we had in in which nevertheless only one minister was ap- d, and begging to know specifically the reasons hree should be wished for in so small a body as We sent up our reasons; they were deemed etory, and the three were appointed. I should herefore, that certainly the lord-lieutenant has, if osest to exercise it, a vote upon the multiplication ensing ministers. No one can be appointed a er without his consent; and I apprehend that that t is understood to be given not merely as approv- the individual but likewise of the circumstance ving a licensing minister in this place or that.

7. Is it necessary that one of the parties desir- ing to be married must in every case appear in person before the licensing minister?——Yes, if the marriage is to be by licence.

1388. In the south of Ireland, where the Presbyterian communities are numerous but still scattered, is it not the case that great inconvenience must occur?——Great inconvenience, unless the licensing ministers are made very numerous; but I do not know whether they are or are not. I know there is a body with which my own Presbytery is very closely associated, called the synod of Munster. It has two congregations in Dublin, one in Bandon, one in Cork, and one in Clonmel. Cork, Bandon, and Clonmel are so far apart that if there are to be any marriages at all it would be necessary that each minister should be a licensing minister.

1389. In cases of that kind do you think there would be any objection?——I should hope the Government would take the circumstances into consideration, and act, as they always have done, liberally, with the view of answering the convenience of the parties and the purposes of the Act.

1390. Do you think there would be any objection to extending that system of licensing ministers to other denominations, to non-Presbyterians?——Not the slightest, if the system of licensing ministers be maintained. Your Lordship will perceive that I am not very favourable to it.

1391. You would prefer a more general system of publication, or rather of inscribing the names in a book, than a system of licensing?——That seems to be much preferable.

1392. That of course would be applicable to all denominations equally?——Yes, that is what I deem most important, in every point of view.

1393. (*Sir W. P. Wood.*) The place where a marriage must be celebrated must be registered?——Yes. Such is the existing law.

1394. Would there be any objection to the officiating minister of any place which is registered, so far as it is a proper place, becoming himself the person to licence?——I have just stated that the licensing minister is obliged to act on the local minister's information, and the local minister may as well do the act himself as do it through another hand, but at the same time I do not recommend a system of ecclesiastical licensing at all.

1395. (*Lord Naas.*) The notice to the registrar would be a notice given in most cases, of course, to a layman?——To a layman. I have not perhaps been as distinct as I should have been. I would require the party to go to his minister and to enter the notice in the notice book of his congregation first; then I would require him to take a certificate of that to the registrar or send it by post; the registrar should have it in his possession, and have it entered in his indexed book (of course open to the public), for a certain number of days; and then, if no caveat has been entered, should issue his certificate, (or *licence*, if it be thought a preferable term), authorizing the celebration. My reason for wishing the notice to pass through two hands is simply this—that it would prevent the possibility of a minister being tempted to ante-date the notice that was given. Sometimes ministers' feelings are wrought upon; at least they were, I know, under the old system, before this Act came in; ministers' feelings were wrought upon and they were tempted to do very irregular things in matters of this kind. Parties came to them in a hurried and unseemly way, asking to be married instantaneously. This the law at that time allowed, and sometimes friends would say to the minister, or he would say to himself, "Here is a case in which evil is likely to arise, or has already arisen, the only preventive of which, or else the only remedy, is instant marriage—marry them off hand." If the minister were wrought upon by his feelings of friendship for one or both of the parties, and by his grief, or perhaps in some degree his shame, on finding that such immorality as I allude to had occurred in his own congregation, in regard perhaps to a person of whom he had hoped better things, and if he were anxious to do all he

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could to remedy the wrong which he feared had already been done, I think he might under particular circumstances be strongly tempted to ante-date his notice.

1396. (*Lord Naas.*) And that of course is a great evil?——Yes. Therefore I should wish the notice to pass through two hands.

1397. (*Lord Chelmsford.*) In fact there would be a certificate, not a notice, but a certificate from the registrar back again?——Yes.

1398. (*Lord Naas.*) What is the shortest interval you would propose?——Not less than a week.

1399. You think that is all the publication which would be necessary?——I think if the minister of one of the parties received notice, and if, as has been suggested, that minister should be required to give information of it to the minister of the other party, and if a certificate proceeding from the minister with whom the notice was first entered were duly lodged with the registrar, and the registrar's certificate of its having been for a week in his possession without a caveat were brought back to the celebrating minister, that would be sufficient publication; provided the interval be made sufficiently long.

There is one point which I should wish to suggest to the Commission. In registering marriages I think it would be desirable that reference should be made to the registry of the births of the parties. The object of registering the marriage is of course to secure to all parties the rights that may accrue to them and others under and from that marriage. Now the proof of descent and the rights of property are very closely connected; and I think it would be well if the notice of marriage were to specify not merely, as at present, the name and surname of each party, the condition (as bachelor, spinster, widower, &c.), the rank and profession, the age, the dwelling place, the length of residence, and the church or building in which the marriage is to be solemnized, but were to state also the district in which the birth of each party has been registered. If this were done, by looking back to the register of that district, you would be able to find at once the parents of the parties; and I think that according to the form for the registration of births which prevails in England you would be able to find whether the parties were born in wedlock or out of wedlock. I am not quite sure, but I think that is so. You would find also not only the name of the father, but that of the mother; and that is sometimes a point of importance. There may be property transmitted through the mother, and a man may be married twice; so that it is possible property coming through the first wife might be claimed by the descendants of the second, or *vice versâ*, unless the mother's name be ascertainable.

1400. (*Lord Chelmsford.*) In many cases a party would not know the place of his birth?——I would say, the district in which the birth of the party has been registered, *when known*; and also, in the case of birth, I would be disposed to state not only whether the child was born in wedlock or out of wedlock, but, if in wedlock, the name of the place where the parents' marriage was registered. That could be pretty well ascertained, I think, by means of those two references; the tracing of descents would be very much facilitated, and it would not occasion any very great trouble. Where the plan was known, and parties were desirous of recording it, I think no evil would arise from it.

1401. There would be no objection to inviting the to state it, but not to make it imperative upon them do it?——Yes. In some cases, to make it imperat would render the performance of the marriage i possible, or else tempt the parties to make statemen at random.

APPENDIX.

In addition to the foregoing, I beg to offer two su gestions. The questions put to me (and the answ of course), relate almost exclusively to *ecclesiastical* distinguished from *civil* marriages. I am favoura to the retention of the power of having marriag celebrated by a civil officer, in cases where the parti prefer that mode of celebration. But the same pri ciple which I have advocated with reference to t ecclesiastical marriages could easily be applied to t civil. Let the primary notice of the intended marria be entered in the notice-book of the registrar of t district in which the parties reside; let it be entered the index and remain there open for inspection; a let a copy of it be instantly forwarded by post to t registrar-general. After the lapse of the specifi time, let the registrar-general send down to the d trict registrar a certificate of its having been for t required length of time in his office; on receipt which, but not previously, the marriage might celebrated. It might be expedient to enact that civil marriages should be celebrated in presence of magistrate, which would afford an additional guarant to the public. The registrar should also be present.

Indeed many arguments of great weight might urged in support of the propriety of requiring that t legal celebration of marriage, including prelimina notices, the act of celebration (so far as the law tak cognizance of it) and the authoritative registrati should be *in all cases* performed in a civil court, a in the presence of a civil functionary; leaving t parties to follow it up by any religious exercises wh they may themselves prefer.

Another suggestion which I take the liberty of su mitting to the Commission is that in each of t United Kingdoms, a *Marriage Notice Gazette* shou be published weekly, in which all notices of intend marriages should appear in a condensed form; that th gazette should be forwarded to all magistrates and pu lic offices to which copies of the existing gazettes a now transmitted; as well as to the district registra and to all persons who may subscribe for the paper, who may order a particular copy; and that no ma riage should be solemnizable unless notice of it h appeared in the *Marriage Notice Gazette* at least o week previously; the week to be counted from t date of the receipt of the gazette in the distr registrar's office. The expense of this publicati could be defrayed by a very small addition (say 3*d.*) the fee now chargeable on the entry of a notice in t registrar's office. This might either be combined wi or might supersede, much of the preliminary formalit that in its absence are employed, or ought to be e ployed.

J. SCOTT PORTER.

Wednesday, 27th June 1866.

PRESENT:

RIGHT HON. THE LORD CHELMSFORD.
RIGHT HON. THE LORD NAAS.
RIGHT HON. THE LORD LYVEDEN.
THE RIGHT HON. MR. JUSTICE O'HAGAN.
VICE-CHANCELLOR SIR WILLIAM PAGE WOOD.
THE ATTORNEY-GENERAL.
TRAVERS TWISS, ESQ., Q.C., D.C.L.
ALEXANDER MURRAY DUNLOP, ESQ., M.P.

LORD CHELMSFORD IN THE CHAIR.

Ven. Archdeacon Sir G. Prevost.

27 June 1866.

The Ven. Archdeacon Sir GEORGE PREVOST, Bart., called in and examined.

1402. (*Lord Chelmsford.*) You are, I believe, Archdeacon of Gloucester?——I am.

1403. Are you a canon?——No; I am not.

1404. We understand that you are anxious to state to the Commission some circumstances connected wi the working of the marriage law in England?——Ye I have not been an archdeacon more than a y and a half, but I have been for several years bef

, the proctor for the clergy, and in that way I have
in communication with many of them; and in
diocese especially, there has been found great in-
venience, and great complaints, and dissensions
ng the clergy; I mean personal dissensions occa-
ally; complaints of one of another; and there has
a great deal of fraud and unsatisfactory conduct on
part of persons seeking to be married in places they
not belong to. The matter has been pressed to
ttention and that of other clergy in the diocese,
we submitted a case to Sir Robert Phillimore.
aps I had better say first that the present state of
law is considered by us to be objectionable, in the
place, as occasioning a great deal of falsehood and
it among persons who pretend to live in places
e they are really not living.

405. Is that in reference to the publication of
ns?——Exactly.

406. Will you have the kindness to explain the
lt of that?——A person living in the country sends
n to some low lodging-house in Bristol or Glou-
er, and takes a lodging, and deposits a bag or
ething there, and never comes near the place. In
e cases I have known that no lodging at all has
taken. Banns are asked, and there is a profes-
made of their residing there. They declare that
do reside there, and sometimes the clergy for
r own protection require them to sign papers, but
e papers are brought by the clerk, and not ex-
ned. There was a man in my own employment at
chcombe, where I live, about 20 miles from Bristol,
went down and was married at Bristol at the time
n he was actually working for me.

407. What was the reason of his doing that; why
he want to conceal the fact?——There was no
icular reason, and as I shall tell you by-and-by,
e is a very general feeling among the poor of wish-
to keep their marriages private. There really
no particular cause, nothing at all to be ashamed
n his marriage; it is only that they like to be
ried quietly without their neighbours knowing it.

408. Has that occasioned the celebration of mar-
es which ought not to have taken place?——In
e cases it has.

409. That of course would be a decided objection?
—It has led to marriages being contracted that were
in the prohibited degrees, or the marriage of
ors. In this particular case there was no harm
e except that it gives rise to deceit. Persons say
t is not true, and the clergyman in the country
plains of his brother in the town. A clergyman
a large parish has a very difficult task to perform,
use it is very hard to find out, in the first place,
at the facts of the case are, and how much the
ties have lived in the house where they pretend to
. They mention the name of some low public
se where they profess to live, and the clergyman,
some one deputed by him, goes and asks the man
e lives there, and is told he does, and then asks if
can see him; he is told, "Oh, he is out at work;"
e goes towards evening he is told, "He is in bed;"
that it is very difficult for him to ascertain the
s, and when he does ascertain the facts, the amount
residence required is very uncertain.

410. In a case of that kind, when parties send to
that they desire to have the banns published, is any
uiry made as to how long they have resided or
ere they are residing?——Clergymen do inquire
ere they are residing, and they would inquire how
g, but then the law does not require any length of
idence before sending their names to the clergyman.

411. Is the statement of the parties taken without
further inquiry, or does the clergyman send to
ertain whether the parties are really resident in the
ce described?——I believe they do. I know, for
tance, that a friend of mine, who had the parish of
St. Mary Redcliffe in Bristol, was very anxious to do his
y in that respect, and he used to require seven days'
ice, which is permitted by the Act of Parliament.
clergyman is allowed, if he thinks fit, to require
en days' notice before he puts up the banns, but
he had very great difficulty in ascertaining the facts, and in one case I saw a letter written to him by some clergyman complaining of his having married some persons who never lived in his parish, but he really could not ascertain the facts.

1412. I suppose, in populous parishes like St. Mary Redcliffe and other parishes in Bristol and other large towns, it is quite impossible for the clergyman to make inquiry in every case?——Yes. If he does, it is very difficult for him to ascertain the facts. We have asked Sir Robert Phillimore as to the law, and he seems doubtful about it. I have here the questions submitted to him and his opinions thereon, which I may perhaps read:—

Your Opinion is requested:

1st.—As to the meaning of the words "DWELL," "residence," and "usual "abode," used in the rubric, the 62nd Canon, and the 4th Geo. IV., and the other Marriage Acts.

2nd.—Whether such a residence as that referred to is a compliance with the requirements of the authorities mentioned?

3rd.—Whether the mere taking such lodgings for the fifteen days with the power to use them, but without using them as a residence is sufficient?

4th.—Whether the clergy can justify requiring proof that the parties have actually dwelt as stated for the time required?

5th.—Whether the clergy can refuse to publish the banns, or to marry the parties, in either and which case?

And lastly, you are requested to advise generally as to the best means of carrying out the law in its true intent.

August 29, 1861.

Opinion.

1 and 2.—I am of opinion that the words referred to in this question are satisfied by a lodging taken for fifteen days, in which the persons taking it occasionally sleep and reside. I do not think they are satisfied by the mere hiring of the lodgings, without *any* residence therein. This is, I believe, the construction which the judges are generally disposed to place upon the Statute; and not long ago the late Lord Campbell expressed to me his opinion that this view was correct.

3rd.—I incline to think there must be a reasonable use of the lodgings.

4th.—I think, having regard to the 7th section of 4th Geo. IV. chap. 76, that if a clergyman had good reason to doubt whether the parties had actually dwelt in the parish during the time required, that he might require reasonable proof of the fact.

5th.—I think that cases might arise of grave suspicion as to whether the parties had dwelt in the parish the prescribed time; and if in such cases reasonable proof had not been furnished of their having so dwelt, that a clergyman might refuse to publish the banns, but it would require the exercise of the greatest discretion on the part of the clergyman, and generally speaking would be an unsafe course.

I do not believe that the true intent of the law was to enforce more than fifteen days' *bonâ fide* residence in a parish in which the parties did not usually dwell. If they usually dwell therein, fifteen days' residence before the banns are published I hold to be unnecessary. The object is to give persons legally interested in preventing the marriage a certain amount of notice that it is about to be contracted.

ROBERT PHILLIMORE.

1413. Has it occurred to you to suggest any mode by which this might be remedied?——We have had a committee of Convocation, which has been the means of getting together several clergymen from different parts of the country, and we have talked the matter over, and we are inclined to think that it would be desirable with respect to the publication of banns, in the first place, that parties should make more distinct statements than they are required to make under the Act of Geo. IV., the present marriage Act, and that they should be amenable for those statements. At present, if a man tells you a falsehood, you have no hold of him at all.

1414. In fact, he should be punishable for making a false statement?——Yes, in the same way as at the register office, in fact. At present we can only ask where they reside, and how long they have resided there; and if they say that they have been there a night, it has been held that that is sufficient.

1415. By what authority are you so restrained?——The Act of Parliament requires the persons to tell us only where they live and how long they have lived there.

1416. Surely the Act of Parliament does not prevent your making the requisite inquiries to prevent a fraud being practised?——It does not oblige them to answer any questions.

1417. It does not prohibit you from asking the ques-

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tions, and of course prudently and cautiously you would go beyond merely asking where they lived. You would ask something more about them, would you not?——Yes, but they might refuse to answer.

1418. (*Lord Lyveden.*) Have you had any cases where they did refuse to answer?——Yes.

1419. (*The Attorney-General.*) Have you considered to what limitations that power should be subject, because, of course, if a compulsory power were given to the clergyman to examine the party, there ought to be limitations?——Yes. I think a similar statement to that given in the register office should be given in writing by the parties, stating whether they are bachelor or widower, how long they have resided, and I should think that they should reside seven days before they make the statement—that was the view we took; and then that one day's notice beforehand would be sufficient, and that they must state whether either party is a minor, and if so, whether there is consent.

1420. (*Lord Chelmsford.*) Would you have the publication for three Sundays in the same way as it is now?——Yes. We have also a suggestion, which I am going to mention by-and-by, that they might as an alternative enter in a notice book.

1421. In what way?——That a person wishing to be married without publication of banns may bring a statement to the clergyman, the same in effect as is made to the registrar, and that this should be entered in a notice book, which should be accessible to the public, and be kept 21 days, and upon that, if the clergyman knows of no impediment, and no person having authority stops the marriage, he may celebrate the marriage; and we further propose, that in order to obviate the feeling of the poor people against publicity the clergyman should be empowered to authorize marriage in another church if the parties wish it.

1422. (*Lord Lyveden.*) Would you have any penalty on the false entry in this register book?——Yes, the penalty of perjury.

1423. (*The Attorney-General.*) I understand that the tendency of your view is to assimilate to a much greater extent than at present the civil requisites in the case of marriages solemnized by a clergyman of the Church to those which are required in marriages before a registrar?——Yes, giving the alternative of either publication on three Sundays or the entering in a notice book, but in all cases requiring distinct statements, not only as to their being a bachelor, &c., and where they lived, but also whether either party is a minor, and in case of their being a minor, a distinct statement as to consent of the person empowered by law to give consent, or a declaration that there is no person empowered by law to give consent. In the case of its being only entered in the notice book, and not published, we should require that there should be an express declaration from the person himself, the guardian or parent, of his consent to the marriage.

1424. (*Lord Chelmsford.*) Have the Committee of Convocation made any report?——We have not yet prepared the report, but we have very nearly finished it. Will your lordship allow me to send it in?

1425. We shall be glad to have it?——I have it in a draft state here, but it will be finished probably to-morrow or the next day, and I will forward it.

1426. I suppose that report will embody all your views upon this subject?——I think it will. I perhaps ought to say that I do not altogether agree personally with the recommendations. I feel a little doubtful whether the entry in a notice book is sufficient, whether there is a sufficient amount of publicity; but the general feeling of the clergy, as far as I can gather it, is that giving such an alternative would be desirable.

1427. (*Mr. Dunlop.*) Is it required that these entries in the notice book should be communicated to the parents or to any parties whatever, or is the mere entry in the notice book itself to be held sufficient?——The entries in the notice book must require a statement whether the person is a minor or not; and in the event of his being a minor, it must be accompanied by a declaration on the part of the parent or lawful guardian that he or she consents to the marriage.

1428. (*The Attorney-General.*) Supposing the declaration should be false, and a person stated himself to be of full age, there would be no means of giving notice to anybody, I suppose?——No; he would make it under the penalties of perjury.

1429. I wish to ask you one or two questions as to the working of the law as it is. I suppose that at present banns are an effectual notice in small rural parishes?——Yes.

1430. And I presume even upon this system of entering in a book the clergymen of such parishes would generally be so well acquainted with the parties, that if there was anything special his attention would be likely to be directed to it?——Yes. I think it is a sufficient notice in rural parishes. The objection to it in the rural parishes is that the poor people dislike the publication, and they feel it rather hard that they are exposed to a publicity which their richer neighbours can avoid.

1431. Do you think the knowledge of the clergymen of such parishes would be a sufficient safeguard?——I think it would.

1432. In populous and large parishes I suppose the way in which banns are read in church as a general rule could not be relied upon to give notice even to the parents and guardians if they were present in the church at the time?——No; I believe it cannot. I hear from some of my brother clergymen that it is felt as a great nuisance even in some of the large parishes to have a long list of names, and it does not answer the effect of publicity.

1433. Supposing the name to be a common one, it would of course not answer the effect, but in such cases your book would answer it even less, I suppose?——Yes; the only thing is that it puts a responsibility on the clergyman to make inquiries.

1434. Do you think that would be possible under any system?——No; I confess I think it would be very difficult, and that is my reason for doubt; but at the same time it does seem to me a hard case that a poor man should be compelled to do what his richer neighbours can avoid, and I am not surprised at their feeling it a hardship.

1435. Your main reliance would be upon the penalties?——Yes.

1436. And in cases in which there is an object of fraud, I suppose, under the present system, supposing the banns would be dangerous, the party could easily get a licence, could he not?——The payment for a licence is a considerable amount; it is about 3*l.*, I think, in my part of the country.

1437. It would be only for a person in tolerably good circumstances?——Yes.

1438. (*Dr. Twiss.*) What is the particular mischief which your suggestions are intended to meet; what is the existing mischief?——The existing mischief is that at present the working of banns is not satisfactory.

1439. In what way?——People go to be married from the country to large towns, and their marriages are put up in the church without any real residence; deceitful and clandestine marriages, marriages within the prohibited degrees, are frequently so contracted. I have known instances of an uncle marrying a niece. In the Register Act there was publication with the board of guardians, but that was objected to, and it certainly is less satisfactory, because a clergyman would have a greater responsibility unquestionably in either solemnizing marriage, or giving a certificate to another clergyman to solemnize marriage, than the registrar would have.

1440. (*The Attorney-General.*) I suppose the registrar would never think of making any inquiry?——No; but the clergyman would, as a person responsible for the moral and religious condition of his people. If he had any sense of duty he would of course feel himself bound to make strict inquiries.

1441. With regard to your statement that there are many of these poor people who wish their marriages to be concealed, what do they do after the marriage

hey live as if they were not married?——No, come back and live as married people. There is ug discreditable in it, but they dislike it. If they married in my own church, there would be a ring together of their neighbours, and an enur to get them to give them beer.

42. (*Lord Chelmsford.*) There is no great evil at?——No, but they wish to avoid it, that is the

43. (*The Attorney-General.*) Is there an inion in some of these parishes to mob people who arried publicly?——Yes; I have seen that very ully, and I think it would be a good thing if were allowed, with the consent of the clergyman eir parish, to be married in other parishes after anns had been duly asked in their own. I can o objection to that change of the law.

44. (*Lord Chelmsford.*) What you suggest would the marriage, supposing it was required that there d be seven days before the publication of banns, se now the publication of banns might begin on Sunday, and the third Sunday after they might arried?——Yes, the clergyman may or may not re seven days' notice at present.

45. I suppose the parties might be married during ing service?——That would remain the same. resent the clergyman may require, and in populous hes, I believe, generally does require seven days' e before he puts up the banns. What we propose at, instead of seven days' notice, it should be only lay's notice, but that there should be seven days' ous residence, because if a man can come and deliberately that he has lived at a place seven you have much better ground to go and inquire him, and it is a more distinct statement than a saying he has come there, and you cannot ask ow long he has been there; at least you cannot nd any refusal to go on with the banns on the er. There is another point which I wish to mention; I think that the clergy generally feel that the time of the publication of banns is not a good one.

1446. I believe there has been some question lately as to whether it is legal?——Yes; whether in making the Act of George the Second, they meant to alter it or not.

1447. (*The Attorney-General.*) One of your archdeacons, I believe, has expressed a very confident opinion on the subject?——Yes; I think the general feeling is that after the Nicene Creed in the morning would be the better time. Whether the Legislature did mean to alter it or not, I do not know.

1448. (*Dr. Twiss.*) In some of the churches now there is a division of the service, would you give an option supposing there was such a division? The morning prayers are at a different time from the communion?——I think after the Nicene Creed would be the best time, that is the usual time for the publication of all kinds of notices.

1449. You think that is the time when the greater number of people are assembled?——Yes.

1450. (*The Attorney-General.*) Lord Hardwicke's Act expressly requires it to be done at the time when it is done, after the second lesson?——I do not know, I think it is a question of construction.

1451. (*Sir W. P. Wood.*) Do you require them to give their addresses when they require to have their banns published?——Yes.

1452. (*Dr. Twiss.*) And one of the parties must be living in the parish at the time?——Yes.

1453. Then there are seven days before you publish the banns?——Yes; it is very difficult in populous places to find out whether it is a *bonâ fide* residence at all.

1453*a*. (*Lord Chelmsford.*) Is there anything further which occurs to you upon the subject of our inquiry?——No, I think not.

REPORT OF COMMITTEE ON MARRIAGE BY BANNS.*

E Committee appointed, in pursuance of a vote of the r House of Convocation on the 8th of February last, nsider and report whether any, and (if any) what tions might be advantageously made in the Acts of ament or in the Canon relating to Banns of Marriage, t as follows:—

That the practice of publishing banns of marriage is eat antiquity and was universal at least in the Western ch, and appears to have originated in the primitive e of acquainting and consulting the Church through lers in each particular place concerning the intended iage of any member thereof, of which usage traces be found as early as the time of Tertullian, and even t. Ignatius and St. Polycarp.†

at canons enjoining thrice repeated publication of s were made in England in the reigns of King John, 1200, of Edward the Second and Edward the Third, 1322 and 1328; and on the two last occasions reference de to the Decree of the Council of Lateran, held A.D. inflicting the punishment of three years' suspension iests who should officiate or be present at marriages e banns had not been duly asked.‡

at at the Reformation the rubric in both the books of Edward VI. and in that of Queen Elizabeth required banns should be asked three Sundays or holydays in ervice time, the people being present after the accusd manner.

st therefore the Convocation of 1603 and 1604 did are merely what was the ancient and established law of Church when they enacted in the 62nd canon—

at no minister, under pain of suspension *per trien-*

nium ipso facto, shall celebrate matrimony between any persons (without a faculty or licence) except the banns of matrimony have been first published three several Sundays or holydays § in the time of divine service, in the parish churches and chapels where the said parties dwell, according to the Book of Common Prayer:

And the same canon inflicts "the like pain" on ministers who, when banns are thrice asked, shall marry "before the parents or governors of the parties to be "married, being under the age of twenty and one years, "shall either personally or by sufficient testimony "signify to him their consents given to the said mar"riage."

That in the final revision of the Prayer Book in 1662 a special form of words was appointed to be used by the minister in the publication of banns. The rubric prefixed to the Office of Matrimony directs that this publication shall take place in the time of Divine Service immediately before the sentences for the Offertory. In the rubric in the Communion Service, however, it is ordered that banns shall be published immediately after the Nicene Creed.

That in consequence of "great mischiefs and inconveni"ences that had arisen from clandestine marriages," solemnized in great numbers in defiance of the canons and rubrics by a few clergymen for whom the punishment of three years' suspension had no terror, an Act was passed in 1753 which made such an offence felony, and punished it by transportation for 14 years. This Act was in this and in most of its other provisions very closely followed by the Act 4 Geo. 4. c. 76, which now regulates marriages in the Church of England.

That both the rubrics mentioned above, that in the Communion Service, as well as that in the beginning of the Office for Matrimony, have been altered of late years, since the beginning of the present century, it is not known by what authority, so as to make them coincide with the re-requirements or supposed requirements of these Acts as to the time of publication.

* Names of the Committee.

of St. Asaph.

Deacons:—
erkshire (*Randall*).
ucester (*Sir G. Prevost*), *Chairman*.
ex (*Otter*).
ontgomery (*Eyton Jukes*).

Proctors:—
Sir H. Thompson, Bart.
Gibbs.
Hopper.
Kennaway.
Mackarness.
D. Williams.
Woodford.
Woodgate.

e Appendix A.

‡ See Appendix B

§ In the Latin version of the Canons it is "per tres dies Dominicos," as in the Statute, making no mention of holydays.

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That in 1822 Dr. Joseph Phillimore, believing that "banns have of late years furnished the most effectual "covers for evasion, deceit, and fraud that the ingenuity of "man could have devised," brought in a bill, which became law, in which many stringent regulations were made in regard to marriage both by banns and by licence.

That this Act being found inconvenient in its operation, especially in regard to marriages by licence, was the next year repealed, and the Act before referred to, 4 Geo. 4. c. 76, was passed, by which church marriages are now regulated.

That by that Act it is provided in sec. 2, that all banns of matrimony shall be published in an audible manner in the parish church, or in some public chapel, of or belonging to such parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the rubric prefixed to the Office of Matrimony in the book of Common Prayer, upon three Sundays preceding the solemnization of marriage during the time of Morning Service, or of Evening Service (if there be no morning service in such church or chapel upon the Sunday upon which such banns shall be published), immediately after the second lesson.

And whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church, or in any such chapel as aforesaid, belonging to such parish or chapelry wherein each of the said persons shall dwell.

That all other the rules prescribed by the said rubric concerning the publication of banns and the solemnization of matrimony, and not hereby altered, shall be duly observed.

And that in all cases where banns shall have been published the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever.

That this Act provides also—

In sec. 6. That the banns be published from a register book of banns and not from loose papers, and that such book be signed by or for the officiating minister.

In sec. 7. That no parson, vicar, minister, or curate shall be obliged to publish the banns of matrimony between any persons whatsoever, unless the persons to be married shall, seven days at the least before the time required for the first publication of such banns respectively, deliver, or cause to be delivered, to such parson, &c., a notice in writing, dated on the day on which the same shall be delivered, of their true christian names and surnames, and of the house and houses of their respective abodes within such parish or chapelry as aforesaid, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively.

In sec. 8. That no parson, &c., shall be punishable by ecclesiastical censures for solemnizing marriages between minors after banns published, without consent of parents and guardians, unless such parson, &c., have notice of their dissent, but that any public declaration of their dissent shall make publication of banns void.

In sec. 9. That republication of banns or licence shall be necessary in case the marriage be not solemnized within three months after the last publication.

That by the 19 & 20 Vict. c. 119, the superintendent registrar is authorized to give licence and permission to persons who have complied with the requirements of the said Act to contract and solemnize marriage in any church within his district, provided (see sec. 11) they have the consent of the minister thereof, without any publication of banns, or licence from a surrogate.

II. Your Committee, having thus reviewed the Acts and the Canon relating to marriage by banns, further report, That the state of the law in this matter appears to them to be very defective and unsatisfactory.

That it encourages, as has been said, evasion, deceit, and fraud.

That clandestine and unlawful marriages are frequently contracted, however desirous clergymen may be to discharge their duty and to prevent them if possible.

That an unfair burthen is thrown on the clergy of large and populous parishes, inasmuch as they are called upon to discharge duties which are really impracticable; at least your Committee do not see how it is possible for them in such places to arrive at any certainty whether persons who apply to have their banns published are residents in their parishes according to the meaning of the law.

In the first place it is very difficult for the minister in such cases to ascertain the facts, whether the persons to be married are residing or have resided in his parish at all, how much they have resided, or whether their residence be anything more than colourable.

And, even if he succeed in ascertaining the facts, there is great doubt about the law; what amount and kind of residence is necessary; what proof of that residence he entitled to require; and what amount of reason to suspe fraud or evasion with regard to the residence would justi him in refusing to publish the banns in the first instance to continue the publication after it has been begun, or marry the parties when it is completed.

The present Queen's Advocate, in answer to a case sub mitted by some clergymen of the diocese of Gloucester a Bristol, has expressed his opinion in the following words:-

"I am of opinion that the words referred to in t question" (namely, dwelling, residence, and usual abo used in the rubrick, the 62d canon, and the 4 Geo. c. 76) "are satisfied by a lodging taken for fifteen days, which the persons taking it occasionally sleep and resid I do not think they are satisfied by the mere hiring lodgings without *any* residence;

"This is, I believe, the construction which the Judg are generally disposed to place upon the statute, and n long ago the late Lord Campbell expressed to me his opini that this view was correct;

"*I incline to think* there must be a reasonable use of t lodgings;

"I think, having regard to the 7th sec. of 4 Geo. 4. c. 7 that if a clergyman had good reason to doubt wheth the parties had actually dwelt in the parish during the tim required, he might require reasonable proof of the facts;

"I think that cases might arise of grave suspicion as whether the parties had dwelt in the parish the prescrib time, and, if in such cases reasonable proof had not be furnished of their having so dwelt, that a clergyman mig refuse to publish the banns; but it would require t exercise of the greatest discretion, and generally speaki would be an unsafe course."

It is plain, therefore, that a clergymen in the conscie tious performance of his duty in this matter has not on to discharge a very obnoxious and difficult task, but is considerable danger of exposing himself to legal penalties

That the subject is of the gravest importance, because very large proportion, about 62 per cent., of the who number of marriages in England and Wales, are celebrat by banns.*

III. Your Committee report, moreover, that there a some doubts as to the legal time of publishing banns the Morning Service, some great judicial authorities havi held that the Act 26 Geo. 2. c. 33 (and by necessa consequence the Act 4 Geo. 4. c. 76, where nearly t same words are used in reference to this point,) requi publication after the second lesson, while other judges eminence have expressed their opinion that that enactme relates only to the Evening Service, and that the legal ti of publication in the Morning Service remains as original appointed in the Prayer Book.

It is most desirable that these doubts should be clear up, as the present Act insists upon the *due* publication banns, as that without which (or licence) a clergyman m not solemnize marriage without exposing himself to mo severe penalties; and further enacts that marriages co tracted between any persons wilfully and knowingly wit out *due* publication of banns (or licence), shall be null an void to all intents and purposes whatever, only providin that it shall not be necessary to give proof of residen after marriage has once been solemnized.

Your Committee further observe, that in populou parishes the publication of a long list of banns is a mo serious interruption to Divine Service, and does not practically secure the publicity which it is the primary intentio of banns to afford.

IV. Your Committee further report, that since the pas ing of the Act 19 & 20 Vict. c. 119, there has been certain parts of the country a considerable diminution i the number of Church marriages.

That this has arisen not so much from any objection the part of Nonconformists to the marriage service in t Church, as from a feeling of dislike to the publicity banns. That this dislike is encouraged by the knowled of the fact that marriages before the registrar involve such publicity as is required for banns, and though und the provisions of this Act and 1 Vict. c. 22. s. 36. th publicity may be avoided and persons may be married their parish church without banns on the production of t Superintendent Registrar's certificate, yet this law gives hi and his deputies a pecuniary interest in discouraging ma riages in church.

A further cause for the diminution of Church marriag under the existing law, is the permission to marry under registrar's certificate in any registered building within

* See Appendix C.

le area of the union, or even two miles beyond those
ts, with the limitation, in the last case only, that such
stered building be the accustomed place of worship of
of the parties; see 19 & 20 Vict. c. 119. s. 13 and 14;
reas marriages at church by banns or licence must be
nnized in the church of one of the parishes in which
parties reside.

conclusion, your Committee recommend to the House
an address be presented to his Grace and to the Upper
se, praying their Lordships to take these premises into
consideration, and to devise such remedies as to them
seem most meet.

appears to your Committee that this remedy must be
Act of Parliament, and they venture to suggest that
Act should contain provisions of the following nature,
that the canons be modified accordingly.

Suggestions for an Alteration of the Law concerning Banns of Marriage.

That in any alteration of the law the duly authorized
ics in the Book of Common Prayer relating to the
ication of banns remain unaltered.

. That the banns be published in the morning service
never there is morning service) after the Nicene Creed;
where there is no morning service on a Sunday on
h banns are to be published, that then they be pub-
d in the evening service at the end of the prayers.

. That no clergyman shall publish the banns of any
ons unless they deliver or cause to be delivered to him
tice according to the form in Schedule A., dated on the
on which it is delivered, stating—

Whether the persons are bachelor or widower, spinster
or widow.

That they have lived in the parish where the banns
are to be published at least seven days, specifying in
the said notice the exact number of days they have
lived there, if less than a calendar month, and the
place in the parish where each party has lived; and,
if there be streets with names and houses numbered,
then the names of the streets and the numbers of the
houses in each case.

That they know no hindrance or impediment to the
marriage by reason of consanguinity, affinity, or
existing marriage.

That neither party is a minor, or, if either or both
parties be minors, then that the consent of the
father or lawful guardian, or, if there be no lawful
guardian, of the mother, has been obtained; or that
there is no person by law authorized to give such
consent.

. That the particulars required to be given in the said
shall be written therein by one of the persons intend-
marriage, or by some person for him or her, at his or
dictation, and shall be declared and signed by that
on in the presence of the minister or of one of the
chwardens or of the parish clerk, who shall attest such
ature.

That any clergyman may, if he see fit, require such
ce of banns to be delivered to him twenty-four hours
re the time of the first publication of the said banns.

. That, if any persons intending to marry wish to
d the public asking of the banns in service time, the
yman of the parish shall, at their desire, enter a notice
ording to the form in Schedule B, to be signed by the
ons intending marriage, and by a churchwarden of the
h or parishes in which they severally dwell, or by two
eholders known to the clergyman, and to whom one
ast of the persons intending marriage is known, dating
notice on the day on which it is entered) in a book to
ept for the purpose by him, or by such person as he
appoint; which book any person may be allowed, on
ication, to examine; and that, after the expiration of
ty-one days from the date thereof, if no impediment be
ged or be in any way known to the clergyman, he shall,
pplication, deliver unto one of the said persons a cer-
ate in the form Schedule C, signed by him, and, on the
uction of such certificate, the persons intending mar-
e shall be entitled to have their marriages solemnized
e church named in the notice, being the parish church
ne of the persons intending marriage.

. That any person wilfully making or signing a de-
ation in any of these matters containing any statement
n by the person who signs or makes such declaration
e false shall be liable to suffer the penalties of perjury.

. Provided, that in all cases of such marriage without
ng of banns in service time, in which either of the
ons to be married is a minor, the persons intending
iage must deliver to the clergyman, together with the
said notice, a declaration of consent on the part of the
r, or lawful guardian, or, if there be no lawful guar-
, by the lawful mother of the minor, signed by him or
her, and attested by the clergyman or churchwarden of the parish where such father, or guardian, or mother dwells, unless such consent be distinctly signified by word of mouth to the clergyman granting such certificate, by the person empowered by him to give such consent, or a declaration signed by both parties, that there is no person entitled by law to give such consent.

IX. That if the parties intending marriage desire to be married in any church within the diocese other than the church of the parish wherein one or both of the parties live, and where the banns have been published or notice of marriage entered, a certificate according to the form Schedule D of the asking of banns in service time, or a certificate according to the form Schedule C of the notice having been duly entered in the notice book for 21 days as aforesaid, may be addressed to the minister of any parish within the diocese, and the minister of such parish may, if he see fit, solemnize the marriage on the production of the said certificate (or certificates, if the persons dwell in divers parishes), in the same manner as if the banns had been published in his own church.

X. That the fees be of one uniform scale, and that those for marriages at Church and those at the Registrar's Office should be as nearly as possible equalized.

XI. That it continue to be necessary that marriages should be solemnized within three calendar months after the last asking of banns in service time, and that, in cases where the banns are recorded in the book, the marriage must be solemnized within three calendar months from the date of the entry in the book.

Signed on behalf of the Committee,
GEORGE PREVOST,
Archdeacon of Gloucester,
St. Peter's Day, 1866. Chairman.

Schedule A.

To the Rev. *Thomas Williams*, Minister of the Parish or Ecclesiastical District of *Farnham*, in the County of *Gloucester*.

I, the undersigned *John Cox*, of the parish of *Farnham* aforesaid, do hereby require you to publish the banns of marriage in your church between me and *Mary Long*, herein named and described, on three Sundays, beginning with Sunday the *13th* day of *May* next, and furnish you for that purpose with the following statement of facts:—

Christian and Surnames.	Condition, whether married before or not.	Rank, Profession, Occupation, or Trade.	Age.	Dwelling-place.	Time during which they have dwelt in such place, which must not be less than seven days.	Church where the marriage is to be solemnized.
John Cox.	*Bachelor.*	*Carpenter.*	*Of full age.*	*Hamlet of Weedon, in the parish of Farnham.*	*14 days.*	*Trinity Church, Bristol.*
Mary Long.	*Spinster*	*Servant*	*A minor under 21 years of age.*	*16, Victoria Place, parish of Trinity, Bristol.*	*A month and more.*	

And I do solemnly declare that I believe the above statements to be true.

And I do further declare that there is no hindrance to the said marriage from kindred or alliance or by reason of any marriage still subsisting.

And I do further declare that *she* (*or* I) the said *Mary Long*, not being a *widow* (*or* widower), is (*or* am) under the age of 21 years, and that the consent of her (*or* my) father (*or* lawful guardian *or* mother) whose consent to her (*or* my) marriage is required by law has been duly given and obtained thereto, (*or* that there is no person whose consent to her (*or* my) marriage is by law required (*as the case may be*).

And I do make the above declaration solemnly and deliberately, conscientiously believing them to be true, and well knowing that, if I make or sign any statement which I know to be false, I shall be liable to punishment as for perjury.

Signed and declared by the said *John Cox*, this *17th* of *June 1866*.

In the presence of *Thomas Williams*, *Vicar of Farnham*.

Schedule B.

In the case of recording of Banns in the Notice-book.

I, the undersigned *John Cox*, of the parish of *Farnham* aforesaid, do hereby give you notice that a marriage is intended to be solemnized within three calendar months from the date hereof between me and *Mary Long*, herein-after named and described, and furnish you with the following statement of facts:—

[*Then shall follow the table of particulars and the declaration as in Schedule A.*]

Ven. Archdeacon Sir G. Prevost.

27 June 1866.

But in this case the following certificate must be appended to the notice, to be signed by a churchwarden or by two householders residing in the parish to whom the parties are known, and who are themselves known to the clergymen:—

I, , being a churchwarden } of the
We, , being two householders } parish of

am / are personally with the above-named

and believe their / his / her statements to be true.

As witness my hand, / our hands, this day of 18 .

NOTE 1.—[To be appended to both forms of notice.] The persons whose consent to the marriage of a minor (not being a widower or widow) are required are, first, the lawful father; secondly, if the father be dead, the lawful guardian or guardians; thirdly, the lawful mother.

NOTE 2.—Persons desirous of being married in any church within the diocese other than the church of the parish within which either of them dwells are hereby reminded that they must obtain the consent of the minister of such church before they give notice of their intended marriage there.

SCHEDULE C.

Form of Certificate to be issued by the Clergyman to the Parties desiring to be married, after their Banns have been entered in in the Notice-book for twenty-one days.

I, , Minister of the parish of , in the county of and diocese of , do hereby certify that on the day of 18 notice was duly entered in the Marriage Notice Book of the said parish of the marriage intended between the persons herein-after named and described, and that such marriage is proposed to be solemnized in the Parish Church of without any public asking of banns in service time; and I do further certify that such notice was duly signed by , one of the parties to the said marriage, and verified by a churchwarden / two householders of the forenamed parish of , who are personally acquainted with the aforenamed and , and also personally known to me.

Christian Names and Surnames.	Condition, whether married before or not.	Rank, Profession, Trade, or Occupation.	Age.	Dwelling-place.	Time during which they have dwelt in such place, which must not be less than seven days.

And I do further certify, that the issue of this certificate has not been forbidden by any person authorized to forbid the issue thereof, and that I have not been informed of any lawful hindrance to the marriage.

As witness my hand this day of 18 .
Minister of the parish of

This certificate should be given on the application of one of the parties intending marriage, and must be by them produced (as in the case of a licence) at the time of the marriage. The certificate should be addressed to the officiating minister of the church where the marriage is to be solemnized.

SCHEDULE D.

Form of Certificate to be issued by the Clergyman after publication of Banns when the Parties desire to be married in another Church than that in which their Banns have been published.

To the Clergyman of the Parish of , in the Diocese of .

I hereby certify that the following is a true extract from the Register Book of Banns of Marriage of the Parish of *Farnham*, in the County of *Gloucester*, and Diocese of *Gloucester and Bristol*.

[*Here shall follow the table of particulars and the declarations as in Schedule A.*]

And I hereby further certify that the aforesaid Banns of Marriage were published in the Parish Church of Farnham aforesaid on three successive Sundays beginning with Sunday 12th May last, and that no impediment to the said marriage has been alleged.

As witness my hand this day of 1866.
THOMAS WILLIAMS,
Vicar of Farnham.

APPENDIX A.

Πρέπει δὲ τοῖς γαμοῦσι καὶ ταῖς γαμουμέναις, μετα γνωμης τ επισκόπου την ἕνωσιν ποιεῖσθαι, ἵνα ὁ γαμος ᾖ κατα Θεου, και κατ' επιθυμίαν.—St. Ignatii Epist. ad Polycarpum, sec. v.

Unde sufficiam ad enarrandam felicitatem ejus matrimonii, *quod ecclesia conciliat*, &c.—Tertull. ad Uxor., lib. ii. cap 2.

APPENDIX B.

Hubert Walter's Canons at Westminster (A.D. 1200). See Johnson's English Canon, pt. ii. p. 21.—"Let no marriage be contracted without banns thrice published in church, nor between persons unknown."

Archbishop Walter Reynolds, Canons at Oxford (A.D. 1322).—In matrimonio quoque contrahendo semper tribus diebus Dominicis vel Festivis a se distantibus * (quasi tribus edictis) perquirant sacerdotes a populo de immunitate sponsi et sponsæ. Si quis autem sacerdos hujusmodi edicta non servavisit, pœnam nuper in concilio † super hoc statutam non evadat.

See also the Constitutions of Archbishop Simon Mepham, in 1328, which speak of the perils arising from irregular marriages, and require the suffragans to prevent them:—"Infligendo quibusvis sacerdotibus etiam non parochialibus, qui contractibus matrimonialibus ante solemnem editionem bannorum initis præsumant intresse, pœnam suspensionis ab officio per triennium."

APPENDIX C.

Total marriages in England and Wales, in 1862		163,830
According to the rites of the Church of England:—		
By banns	102,780	
By registrars' certificates	3,962	
By licence	19,512	
By special licence	19	
Not stated	3,368	
Total	129,641	
Marriages in registered buildings:—		
Roman Catholics	7,382	
Other Christian denominations	13,795	
Registral offices	12,652	
Quakers	60	
Jews	300	
Total marriages not of the Church of England	34,189	
Total marriages, in 1863		173,51
According to the rites of the Church of England:—		
By banns	109,572	
By registral certificate	4,312	
By licence	19,298	
By special licences	19	
Not stated	3,542	
Total Church of England marriages	136,743	
In registered buildings:—		
Roman Catholics	8,095	
Other Christian denominations	14,714	
Registrars' offices	13,589	
Quakers	51	
Jews	318	
Total marriages not of the Church of England	36,767	
Total marriages in 1864		180,38
According to the rites of the Church of England:—		
By banns	113,554	
By registral certificate	4,257	
By licence	19,874	
By special licence	12	
Not stated	3,376	
Total Church of England marriages	141,083	
In registered buildings:—		
Roman Catholics	8,659	
Other Christian denominations	15,627	
Registrars' offices	14,611	
Quakers	58	
Jews	349	
Total marriages not of the Church of England	39,304	

Upon these statistics it may be observed—

1. That the proportion of marriages in the Church of England has been much the same in the three years;
2. That the proportion of marriages by banns compared with those by licence is very great, as 5·2 to 1.

* Lyndwood appears to take this word in the sense of merely distinct, and says that publication on three holy days immediately following one another is sufficient.

† The Council of Lateran, in 1216; the punishment there enacted three years suspension from office.

Ven. Archdeacon Sir G. Prevost.

27 June 1866.

o Her Majesty's Commissioners on the Laws of Marriage the humble Memorial of Sir George Prevost, Bart., Archdeacon of Gloucester.

our memorialist having, with your kind permission, ared before you personally, and having also transmitted ou copies of a report of a committee of the Lower se of Convocation on the subject of marriage by s, begs leave further to represent to you,—

at after the experience of 32 years as a parochial ster, your memorialist is convinced that in order to effectually clandestine and unlawful marriages, it is sary:—

In the first place, that there should be before all ages a full and explicit statement of the names, ences, age, and condition of both the persons in- ng to contract marriage, made and signed by one or of them. In his own opinion it would be safer and r to require that it should be signed by *both* of them. person or persons signing such statement must be y responsible for the truth of every averment con- d in it, and punishable for any false statements ingly and wilfully made therein. This statement d, in the judgment of your memorialist, be sufficient, were made in the form in which it is now made gistrar's offices, in order to obtain the registrar's icate.

deed, the great defect of the present law of marriage anns appears to your memorialist to be the want of ufficient statements of this kind, such as this which ade before registrars, or the affidavit sworn before a gate in order to obtain an episcopal licence.

Secondly, *besides* such statement, and *in addition to* ur memorialist believes it to be necessary as a further ity that there should be—

(*a.*) Either a real and effectual publication of the intended marriage by reading over the names and descriptions of the persons to be married, or setting them up where they can be read in some place of common and ordinary resort in the parish or district where these persons are best known;

(*b.*) Or else (*as an alternative*) their names and descriptions must be communicated to some official person living in their immediate neighbourhood, who should be distinctly charged with the duty and responsibility of making the necessary inquiries both as to the existence of impediment, and also as to minority, and in case of minority as to the knowledge and consent of parents or guardians, or whether there be any person whose consent is by law required.

ur memorialist would observe that this second secu- appears to him to be obtained in the first of these native methods, namely, publication, in marriages by s, when the banns are published in parishes where ersons to be married are *bonâ fide* residents, at least, s those parishes are excessively large and populous, hich last case the best remedy would be their sub- ion.

nd in marriages under episcopal licence it appears to that this security is obtained to a considerable degree he second method, *i.e.*, the communication of the in- ed marriage to an official person who has the means owing or inquiring whether there be any impediments ot, as the clergyman, responsible for the marriage, is always the clergyman of the parish, wherein one th of the parties reside) is in the licence itself ctly inhibited from solemnizing the marriage, if he ld be aware of any "fraud suggested, or truth sup- essed at the time of obtaining the licence." And in to make this security more effectual your memo- rialist would respectfully suggest whether it would not be advisable to require persons who desire to be married by licence to give the clergyman of the parish wherein they are to be married, two or three days' notice of such intended marriage that he may have time to make the necessary inquiries.

In the case of marriages before registrars or on registrars' certificates, though the *first* security of a full and sufficient statement made under fear of penalty is well obtained, the *second* is wholly wanting in either form; for neither is there any real publication of the intended marriage, as the registrar's offices are not places of common resort, nor on the other hand, is the local registrar to whom the intended marriage is communicated under any legal or even moral obligation to make *any* inquiry, neither is he a person (generally speaking) likely to know or hear of any concealed impediment or intended evasion of the law, if any such thing should exist.

A case has very lately come to the knowledge of your memorialist in which an unlawful marriage was contracted on a registrar's certificate. And as in these marriages (as has been observed) the whole security consists in the statements of the parties, and in their fear of punishment for any falsehood therein contained, your memorialist was sorry to hear that in the instance to which he refers, though there was unquestionably the legal guilt of perjury, or at least, of a false statement equivalent to perjury, there never was any prosecution, and he is led thereby respectfully to offer the suggestion that in such cases it should be an express duty of the Registrar-General, or of some other public officer to prosecute at the public expense persons knowingly and wilfully making false state ments with a view to contract clandestine or unlawful marriages, on having evidence of their guilt brought before him. It does not seem to him fair or wise to leave the prosecution of such offences to private individuals, and still less to the clergy of the parish or parishes where they reside. And your memorialist would further suggest that the local registrar should have the duty imposed upon him by law of making due inquiry into the truth of the allegations on the faith of which he issues his certificate, or proceeds to solemnize marriage. And upon this same principle, in case any enactments should ever be made such as are suggested in the reports of the Committee of Convocation, to empower a clergyman to marry, or to authorize marriage without publication of banns in church, on the mere recorded statement of the persons seeking marriage, such clergyman should (in your memorialist's judgment) be (in addition to his moral and canonical obligations as a Christian minister) distinctly required by statute, under penalty, to make due inquiry.

Your memorialist has been emboldened by your kindness to him to offer these additional suggestions, many of which relate to portions of the marriage law, to which the reports of the Committee of Convocation has no direct reference, viz., marriages under episcopal licence or by registrars' certificates. His excuse for so doing is his matured conviction that proper regulations and securities with respect to the marriage contracts are most essential to the moral and religious well-being of all classes of the community, and especially of the poor; and he prays and trusts that your labours may be so guided and blessed, that the security and sanctity of the marriage tie, which recent legislation has in some very important respects tended to disturb and weaken, may through those labours be in some measure restored among us.

George Prevost.

August 15, 1866.

J. M. Strahan, Esq. M.D.

27 June 1866.

John Mitchell Strahan, Esq., M.D., called in and examined.

454. (*Lord Chelmsford.*) I believe you reside at ar, in Scotland?——I do.

455. You have been a medical man there for reat number of years?——Yes, for 23 years, in Stirlingshire for about 15 years before that.

456. I suppose during your practice you have seen eat deal of the practical working of the Marriage of Scotland?——I have had my attention partirly directed towards the immorality among the king classes in Scotland. I have not paid much ation to the marriage laws, except in its bearing he morality of the country.

1457. What is the result of your observation upon that subject; is it that it is calculated to advance morality or not?——My attention was first drawn to the subject in consequence of observing the very great extent of immorality amongst the working classes, not only as evidenced by the large number of illegitimate children, but also by the still larger number of marriages after the woman was with child—the number of children born within eight months of wedlock. I found, to my astonishment, that amongst the working classes nine out of 10 women when married either had had illegitimate children or were in the family-way at the

J. M. Strahan, Esq., M.D.

27 June 1866.

time of marriage. It is very extraordinary. I believe that is the average state of Scotland. I am confining myself strictly to the working classes. Amongst the middle and upper classes such a thing scarcely exists.

1458. (*Mr. Dunlop.*) It is in the agricultural districts?——In the agricultural districts chiefly.

1459. (*Lord Chelmsford.*) Your observation applies chiefly to the agricultural districts?——Yes; it is better amongst the working classes of other denominations.

1460. (*Mr. Dunlop.*) Such as mechanics?——It is considerably better among mechanics. I have some experience of woollen manufactories, and I find there that it is only to about one-third the extent that it prevails amongst the agricultural classes. I have a large midwifery practice, and I very rarely attend a woman with her first child where the child is not born within a few months after wedlock, or else the woman has had an illegitimate child before, whereas in my practice amongst the middle and upper classes I never attended a single case of childbirth where the child was not beyond the nine months after marriage.

1461. During the whole course of your practice?——During the whole course of my practice I have known of no cases amongst the middle class except the farmer class, I mean working farmers, not gentlemen farmers; there I find it more near the state of the working class; but amongst agricultural labourers, ploughmen, and so on, I have very rarely attended a first childbirth where it was not within eight months after marriage.

1462. Have you in any way ascertained these facts, which are very startling, beyond the district in which you have carried on your practice?——No. I have examined carefully into the registers of five parishes in my neighbourhood, because I know those five parishes, they being in my district. I have taken the marriages carefully from the registers, and then, so far as they were known either to myself or to the registrar, have traced out all these cases, and from that examination I made out that nine cases out of 10 were such as I have mentioned.

1463. In your judgment has the Marriage Law of Scotland anything to do with this result?——I do not know that it has very much to do with it; I think it is owing to other causes; but I believe the Marriage Law of Scotland in legitimizing natural children by a subsequent marriage has a considerable influence. I believe that women are more ready to fall looking forward to marriage, and looking forward to having no stain thrown upon them afterwards. They are thoroughly restored to their position, the woman is made an honest woman of, the children are put on a par with the other children, and I believe that leads to a laxness of feeling in regard to marriage.

1464. (*Mr. Dunlop.*) Do they wait generally until they have had children to be legitimized, or do you generally find that the marriage is after the first pregnancy?——Yes, more commonly. I believe it is very common for women to allow themselves to be seduced in the hope of being married. They go on till they are in the family-way, and then if the young man is well behaved and the women at all respectable the friends probably interfere, and the marriage is hurried on.

1465. These connexions, you think, are generally with a view to marriage?——No; there is a great deal of what is called courtship in Scotland, which does not mean courtship in the ordinary sense of the word, but rather flirtation. Young men and young women meet together at night, and the ordinary time is the middle of the night, when every one else is in bed; there is no engagement to be married, but it is more like courtship with the hope of, perhaps, becoming sweethearts. This at late hours leads to familiarities, and that leads to fornication, and I believe frequently the woman is led more easily to fall in the hope thereby of securing a husband.

1466. (*Lord Chelmsford.*) Where do these midnight meetings take place; it is a very extraordinary state of society?——It is universal amongst the working classes to have this manner of courtship of which I speak; there is no courtship in any other form, no flirtation in any other form; the fathers and mothers will not allow their daughters to meet a young man in the daytime; the young man never visits the family but the parents quite allow this; they have done it themselves before, and there is no objection to it. The young man comes, makes a noise at the window; the young woman goes out, they go to some outhouse; or perhaps the young man is admitted to the young woman's bedroom after all are in bed, and there is an hour or two of what is called courtship, but which would more properly be called flirtation, because it is not necessary that there should be any engagement to marry in these cases.

1467. (*Lord Lyveden.*) Do these meetings take place at particular periods, such as harvest time, or is it over the whole of the year?——The whole of the year; very commonly the young man visits the young woman once a week.

1468. (*Lord Chelmsford.*) In England that would be called keeping company. It is a very extraordinary mode of keeping company when the parents allow their daughter to go out with the young man at midnight or the young man to come into her bedroom?——Yes the parents know no other way of doing it. I have reasoned with the parents often, when attending a case of illegitimate birth, pointing out to the parents how it is they have been led on, but they cannot imagine any other way of doing it; their daughters must have husbands, and there is no other way of courting.

1469. (*Mr. Justice O'Hagan,*) Does it prevail generally in Scotland?——Universally amongst the agricultural labourers.

1470. (*Mr. Dunlop.*) Do these young men live under any kind of supervision and knowledge of the master, or can they go out and in as they please?——Ploughmen, for instance, very often live in bothies, or in the farmhouse; they get out after all are in bed—out of the window, or, if they live in a bothie, without any trouble. They go to the neighbouring farmhouse they knock at the window, the girl comes to the window, and if she knows the young man, or after a little parley if she does not know him, she either comes out and goes with him to an outhouse, or he comes into her bedroom. You must remember that they have no other means of intercourse.

1471. That is the point you press so much?——Yes a young woman cannot see either a sweetheart or an acquaintance in any other way. I believe if it was not for fear of being out at night the girls would visit one another in the same way; they have no other means of visiting; the customs of the country are such that a young man could not be seen going in day light to visit his sweetheart.

1472. (*Mr. Justice O'Hagan.*) If the father knew that the young man was coming into the house, and knew that he was with his daughter, would he not interfere?——He would lie comfortably in his bed, knowing that his daughter was in an outhouse or barn with the young man for perhaps two hours, shutting his eyes to it in the same way that a person in the higher rank would shut his eyes to his daughter going out for a walk with a young man.

1473. (*Lord Chelmsford.*) You are aware that one mode of marriage in Scotland is by promise and subsequent intercourse between the parties?——Yes.

1474. Do you not think that such a law is rather calculated to favour this species of courtship which you have adverted to?——It appears so; but it is very rare. It is very rare that there is a written promise; the law is "a written promise with copula." I believe there is very often a verbal promise. I believe very often being in the dark and so on, the young man is led to take liberties, and then he very probably promises marriage, but that is never looked upon as a means of proving marriage; it is almost always followed by regular marriage.

1475. It is not calculated to induce the woman to yield herself under a promise which has no effect in law, but which still she believes to be sufficient?——Decidedly; a verbal promise often leads a woman to

; but a verbal promise with copula will not cause iage.

76. (*Mr. Dunlop.*) It is simply her reliance on ord ?——Yes.

77. (*The Attorney General.*) The moral sense d not draw that distinction between the verbal the written promise ?——They do not draw the ction.

78. In point of fact, is it easy to see why the law, ng recognized the principle that *consensus facit imonium*, should insist on the promise being in ng ? Do the people understand that the promise t to be in writing to make a marriage ?——No. I ot think that in the class I am speaking of it is very thoroughly understood that a written pro- would constitute marriage.

79. They have got hazy notions of marriage ether ?——Yes ; they look for a regular marriage wards. I believe it would be much more reasonable ake a verbal promise, followed by copula, into a iage, which is not the case in Scotland.

80. (*Lord Chemsford.*) Would it not be more nable to do away with it altogether ?——Most edly it would. That form of marriage by pro- with copula seems to me never to do anything perhaps catch an individual. The woman who coolness enough to insist upon a written promise e falling is, I think, little deserving of sympathy. see no ground for retaining it, or, indeed, any of rregular forms of marriage in Scotland.

81. (*Mr. Dunlop.*) Do these connexions gene- pass into marriage by an irregular or by a regular iage ?——By a regular marriage. Irregular mar- es, in my part of the country, are very rare, except ng the lowest of the working classes, the vagrant ; with them marriage by habit and repute is y common ; parties go and live as man and wife out any ceremony ; I believe that is frequent ; I believe that leads to very great confusion and ble in the management of poor funds.

82. (*Lord Chelmsford.*) Habit and repute are ly evidence of a marriage ?——Yes, I am aware at.

83. Parties must live together notoriously as and wife, and be so accepted by their friends by the neighbourhood where they are living ; so it is merely evidence that there has been a previous iage ?——It is very common amongst the lowest king classes to have marriages of that kind, that is, ve together without any marriage ; and there is no tion about it till they become burdens on the poor ls and then it becomes an important question ther they are married or not, because if they are married, the burden of the woman and children on the woman's parish, being illegitimate children, in the other case upon the man's parish ; then it es to be a question between the different parochial ds.

84. The question is whether they have been liv- penly as man and wife, or in concubinage ?——Yes ; then, although they have been living openly as and wife, it cannot constitute a marriage without w plea, without an action of declarator. They ld not be considered in law, I suppose, as man wife until a court had decided that they were ried.

85. (*Sir W. P. Wood.*) I suppose you mean the law guardians would not recognize it ?——The law guardians would not recognize it ; the one ld say they are not married, and the other they married ; and there would be no way of settling it by action.

86. (*The Attorney General.*) What do you con- r to be the cause of their generally going after- ds to be regularly married ; is it that there is a al sense of the distinction between marriage and cubinage, or is there any other reason ?——Do you n in the cases I have been speaking of ?

87. I understood you, in answer to Mr. Dunlop, ay, that in the majority of those cases of which you formerly spoken, concubinage was followed by regular marriage. I should be glad to know if you can tell me, according to your judgment, what is the cause of that ; whether it is to satisfy a moral sense of the distinction between concubinage and marriage, or whether it is from any other cause ?——It is not common in that class to live in concubinage any length of time—to live openly. If a woman becomes in the family-way she either insists on being married, or the connexion is dropped.

1488. (*Lord Naas.*) Are the promises generally kept as a rule ?——No ; they are very often kept, and being often kept it is an encouragement to the woman to trust in the promise ; but they are not generally kept by any means ; they are generally kept by young men of good character, rather the better class of persons, where the parents probably interfere, and where probably the girl has more respectable parents. In that class it is generally followed by a marriage. Young men who have no particular connexions, who can go away quite easily to another farm service, very often abandon the girl and leave the place.

1489. (*The Attorney General.*) Can you give us any proportion of the cases in which the former person marries the woman, and those in which he does not ? ——From a vague recollection I should say one-third of them ; there might be more than one-third.

1490. Do I understand you to say there are more than one-third in which marriage does not follow, or in which it does ?——I think perhaps there are two-thirds in which marriage does follow, and one-third in which it does not, so far as my experience goes.

1491. (*Dr. Twiss.*) There is a ceremony of marriage ?——A regular ceremony of marriage by a clergyman.

1492. (*The Attorney General.*) Are the dwellings of the classes of which you have spoken such that the young women have separate bedrooms ?——Very often not ; very often amongst the labouring classes a family even of grown-up sons and daughters will have only one bedroom ; that is improving.

1493. (*Lord Chelmsford.*) You have spoken of your objection to irregular marriages generally, but do you mean to extend to what is considered an irregular marriage the declaration of consent *per verba de præsenti* ?——I think so. I do not see any good that such a marriage does ; I can see no case in which it could be useful. A regular marriage by a clergyman is very easily obtained, so that when the parties really intend to be married I cannot conceive of any case where it would be necessary to do it before witnesses, or they must be very rare.

1494. Supposing that there was a feeling, as we hear that there is, in favour of marriage of that description in Scotland, would it not be desirable at all events that there should be some registration of the marriage required after it had taken place ?——I am not aware that there is such a feeling in Scotland in favour of it ; in one or two of the border counties I believe there was, but I understand that even there such a thing is scarcely practised now, and in my part of the country, Stirlingshire and Clackmannanshire, I never knew an instance of it.

1495. We have had evidence that there is a feeling in favour of retaining that which is called and considered an irregular marriage ; but it is an extraordinary thing that there should be that feeling when we hear that the proportion of irregular to regular marriages is so small as to be perfectly insignificant ; we hear that it is 20 to 20,000 in a year ?——I should think that with the exception of one or two parishes on the borders, where it formerly prevailed, such a thing does not happen in Scotland.

1496. (*The Attorney General.*) Can you suggest any reason why the clergy of the General Assembly, and others, should be attached to the system ; in your experience does it tend in any way whatever to promote regular marriages that these facilities should be allowed ? ——I believe there is a confusion when people talk of the Scotch Marriage Law. The regular marriage is by a clergyman, and in their own houses, after the Presbyterian fashion ; and that is decidedly popular, and it

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would be very unpopular to change it. It is general to talk of this as being a Scotch marriage, and I think it is popular, but I do not think there is any feeling in favour of the irregular marriages; they are very rarely practised. A number of clergymen have an idea that marriage with a written promise is a means of doing justice to the woman, but that justice, when it is done, is almost always done by a regular marriage taking place afterwards; it is scarcely ever done by looking upon them as married without their being married; besides, the written promise is a very rare thing. Then, again, there is a feeling perhaps with a number of clergymen in favour of putting the different children of the same parents on the same footing; the child that had been born illegitimate, and the parents afterwards marrying, they think it right and proper that it should be put on the same footing; and there may be something in that.

1497. (*Mr. Dunlop.*) That is the law of legitimization?——Yes; that is one point in which the Scotch and English Marriage Law differs; but there again it certainly gives great encouragement to vice in restoring the woman, and restoring the family to such perfect equality.

1498. With regard to these poor people, vagrant people, who live in habit and repute, do you consider that there is a real and true intention, generally, of marriage on the part of people who live in that way?——I believe so; those I speak of, where they have lived for years together, really consider themselves as married; and I believe they are quite aware that the law would make them married; and they live with the intention of remaining all their lives so.

1499. (*The Attorney General.*) According to your observation, should you think that the regular marriages would be more few or more numerous than at present if none others were recognized by law than those which in some way were made regular?——I believe they would be rather more frequent. I say rather more, because I believe there are very few irregular marriages.

1500. You think they would be not less frequent?——Not less, but more frequent. I think all the cases where they are now married irregularly, if there was no law as to irregular marriages, that all of them would be married regularly, except perhaps in a few cases where the man has been caught, and where the man did not intend to, and where the court of law has found him to have gone too far; but those cases are very few, and in general all the cases now married irregularly, even on the borders, would I believe be married regularly.

1501. A view of this kind has been stated to us, that the effect of the present law is, that persons who have given a promise of marriage, or consented to marry, and had connexion, regard their position as one not out of the pale of morality, and are more inclined than otherwise they would be to make it completely respectable by a regular marriage?——Yes.

1502. And therefore it is thought by these witnesses that this system of law is a sort of stepping-stone to a regular marriage, which might not take place if they knew they were living in sin; is that your view?——I do not think so. By far the most frequent cases are those where there has been a mere verbal promise, not a written one; these cases very often are followed by a regular marriage; but I do not think it would be right to look upon it as a stepping-stone. I think we should rather try to discourage the stepping-stone which is shown to lead to the evil.

1503. I understand your view rather is, that the notion of sin as connected with concubinage is almost obliterated?——Quite so; and it would be much better not to smooth over it, but to increase the idea of the sin of concubinage apart from marriage. The general feeling amongst the working classes is that if they are afterwards married there has been no sin; there is no scandal, no shame, no disgrace, and consequently they feel that there has been no sin, that it has been made all right by the subsequent marriage.

1504. (*Mr. Dunlop*). Is there any process in the churches in your district of rebuking them after marriage?——Yes, it is always done.

1505. Is that considered a kind of whitewashing?——It is considered whitewashing, but it has not much influence; if it was never done, or if it were more frequently done, I do not think it would have much influence one way or the other. It is a means of getting church privileges afterwards; they cannot get church privileges without it.

1506. (*The Attorney General.*) Do they like to be rebuked?——Yes; it cleans them and restores them thoroughly in the church; a large proportion of them come to be rebuked.

1507. (*Mr. Justice O'Hagan.*) Is this before the congregation?——No, only before the session; it is never done before the congregation now, but it used to be.

1508. (*The Attorney General.*) The kirk session consists of the minister and elders?——Yes the minister and perhaps half a dozen elders; they appear three separate times, and are admonished. If the parties are married they appear only once; if not married generally three times.

1509. Do they both come?——They both come if they have been married, and very often, if they have not been married, they both come.

1510. Tendering themselves for rebuke?——Yes.

1511. Without invitation?——Without invitation they generally do so if they want baptism for the child, or if they wish to be admitted to the sacrament; if they have been under this scandal they will not receive baptism or admission to the sacrament, and therefore they come to be rebuked.

1512. (*Lord Chelmsford.*) Do they give notice that they are coming to be rebuked?——They generally apply to the minister in private, and tell him that they have committed the fault and so on, and he causes them to be summoned to the session.

1513. (*The Attorney General.*) Upon that occasion how would they act supposing it was a question whether there had been a previous consent or promise; would the absence of a regular marriage be an equal cause for rebuke?——Even if they had had an irregular marriage, if they had been married before witnesses, for instance, they would still be rebuked.

1514. And would be debarred from the Lord's supper, and from the baptism of the children until that had been done?——Yes; some clergymen would perhaps insist on their being regularly married. I believe formerly, when irregular marriages were more common, it was customary merely to rebuke them, and not to insist on a regular marriage.

1515. So that in that respect there is no difference between the practice of the church in cases of irregular marriages and its practice in cases of concubinage?——None in general. I said that formerly, when irregular marriages were more common, in certain of the border parishes, I believe, they were merely rebuked and then considered married; of course with more concubinage they would rebuke them, and insist upon a regular marriage before admitting them to privileges.

1516. The only difference is, that in the one case they would insist on a regular marriage, and in the other they might not?——They might not.

1517. (*Lord Lyveden.*) How would he insist upon it; would he merely refuse the rebuke?——He would refuse to rebuke them, refuse to receive them for rebuke until they were married; it would be said that they were living in sin, and therefore could not be restored to church privileges until they were married.

1518. (*Lord Naas.*) Is it a common thing for a man in this class to marry a woman who has had a illegitimate child by another man?——Very common.

1519. Is that looked upon as a disgrace to the parties?——Scarcely. When you come up to the middle class a young man would not marry a girl that had had a child to another man, and very probably would not marry a girl that had had a child to himself; but in the lower classes it is not so; it is almost universal to marry a woman that has had a child, or that is with child to himself; but it is very frequent to marry a woman that has had a child to another man; the

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...n is the burden of the child; the burden of the ...ay be an obstacle, but the disgrace would be

...0. *Is it supposed that the woman by marrying* ...her man wipes off her disgrace with the former ——Yes; but it is so common that the disgrace is ... much as to prevent the young man marrying

...1. (*The Attorney General.*) It is hardly within ...quiry, but still it is interesting to know; can you ...ne whether in these cases, where the woman ...s a man who is not the father of her child, any ...ion as to the parent of the previously born child ...? Are they apt in law to pass as the children ... subsequent husband?——No, I do not think so.

...2. The distinction is always kept up?——The ...tion is always kept up; very often the illegitimate ...goes by his own father's name even among the ...children; and I do not think there is apt to be ...nfusion of that kind.

...3. (*Lord Chelmsford.*) Is there anything else ... you wish to state to the Commission?——In ... to proclamation of banns, I was a little struck ...a case where there was considerable difficulty. ...otland banns cannot be published unless the ...has resided six weeks in the parish; he must be ...iled in the parish. I knew a young lady who ... from Australia who wished to be married with- ...iting the time, and it was found impossible to ...e requisite proclamation. I think some provision ...at might be beneficial.

...4. In such a case an irregular marriage, if the ...s do not object to it, would be a convenience?—— ...but the middle and upper classes would all object ... irregular marriage.

...5. (*The Attorney General.*) I suppose that is ...y matter of ecclesiastical regulation; the General ...bly could alter the law in that respect?——The ...al Assembly, I suppose, could do so. I think a ...man cannot marry a party unless he gets a cer- ...e of proclamation; and then again, the session ... considers it illegal to proclaim any party that ...ot been six weeks resident in his parish.

...6. (*Lord Chelmsford.*) He proclaims the banns, ...h ought to be proclaimed on three Sundays, on ...Sunday?——It is a common practice.

...7. And he gets a larger fee?——And he gets a ...r fee. There seems a propriety in either pro- ...ing altogether on one Sunday, or in altering the ...r acting more rigidly, because the law is univer- ... broken in that way.

1528. (*Mr. Dunlop.*) He never scruples in proclaiming a person living in his parish and the lady living in another parish?——No; because if the man is living in his parish he is bound to proclaim; but there must be two certificates of proclamation, unless the parties are residing in the same parish; he must have a certificate from both; but where one party has no residence in Scotland then they cannot get a certificate from both.

1529. Do they not take a certificate of proclamation from the parish in England?——I suppose proclamation of banns in England would do if they got the certificate of proclamation from England; but if it were abroad, where it could not possibly be got, I think it would be an advantage if there were some means by which a man might give a declaration that he has no domicile in the kingdom, and therefore might be allowed to be proclaimed in the parish of his present residence, without the six weeks residence. I think some provision of that kind would probably be advantageous.

1530. (*Dr. Twiss.*) The marriage might be had in the place where he was domiciled?——Yes; the law would not probably make it a bad marriage, but the minister would be liable to a penalty for marrying without the requisite certificates, and therefore he would refuse to do it; but such a marriage would be valid, I have no doubt, if the minister would do it. A clergyman is rather careful not to proclaim without the necessary certificates, and there is a difficulty in getting it done. In the case of this lady the only way was to explain the circumstances to the minister, and the minister did marry them on only one certificate of proclamation, that of the gentleman. I have known several cases of that kind. I knew a case of a surgeon in the navy who wanted to be married in Scotland; he had no domicile in Scotland, and he could not be proclaimed; he had considerable difficulty.

1531. (*Lord Chelmsford.*) How was it got over?——He consulted me about the matter. I recommended him to wait on the minister and explain the circumstances, and I thought he would probably do it.

1532. (*Mr. Dunlop.*) And the minister took the responsibility?——I think he did. In the other case of the lady he did do so; I represented the case to him, and he took the responsibility; there was no other way of getting over the difficulty, except by compelling him to remain six weeks.

1533. You have published pamphlets on the immorality of Scotland?——I have delivered lectures on the subject, which were afterwards published, copies of which I give in.

Adjourned.

Wednesday, 6th June 1866.

The Reverend Dr. Bryce called in and examined.

Rev. Dr. Bryce.

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...34. (*Lord Chelmsford.*) Of what religious de- ...nation are you?——I am a member of the United ...byterian Church.

...35. You were chairman of the Committee of the ...iage Law Association in 1859?——Yes.

...36. What association was that?——It was an ...iation which originated in the grievances inflicted ...ertain classes of Protestant dissenters by the Irish ...riages Act of 1844. The Association was first ...ed by the bodies that were aggrieved, and after- ...ds many leading men of other bodies joined it; for ... the first it aimed at a simple and comprehensive ...sure which should make the law the same for all re- ...us denominations, for its founders deemed that the ... way to get the grievances remedied by which they ... themselves affected. The bodies that were affected ..., all the non-Presbyterian dissenting bodies; ...ly, those bodies of Presbyterians whose views ...he matter of Erastianism were very strict. The ... of 1844 authorized each presbytery to appoint a minister who should have the power of granting licences for marriage, as the bishops do in the established church; but it required that the ministers to be so appointed should be approved of by the Lord Lieutenant and be removeable at his pleasure. People with strong anti-erastian views could not accept the privilege on these terms; so they were obliged to forego the advantages which the Act afforded to them as Presbyterians, and step down into the position of the non-Presbyterian bodies. There were some other provisions of the Act which we all felt to lay us under considerable hardships; but I need not take up the time of the Commissioners with these details as they were not matters of conscience. I have brought with me a scrap-book in which I got pasted the different documents that were printed from time to time while that association was in active operation, and perhaps it would save time if I were to leave it with the Commissioners, that they may look into it at leisure afterwards.

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1537. Probably you would be kind enough first of all to give us your opinion with regard to the present working of the marriage law, particularly as it affects persons of your religious denomination?——The law as amended by Sir Edward Grogan's Act of 1863, has relieved us from the special grievances we complained of; but it is a very unsatisfactory piece of legislation, and only adds to the complexity of the law. Sir Hugh Cairns had previously brought in two Bills; he very kindly considered the case of the aggrieved bodies, and paid great attention to all the bearings of the subject. He brought in a Bill in 1861, and had it printed that it might be considered during the recess, and another in 1862. They were excellent Bills; the second (1862) was much improved, but he was not able to have it passed into law, it was so much delayed by the bad faith of certain persons who had promised to support it. The next session Sir Hugh Cairns did not feel disposed to make the attempt again, and Sir Edward Grogan brought in a Bill, much less perfect as a general measure, but one that relieved the aggrieved bodies from all the grievances that affected their consciences, and from nearly all that affected their dignity. There are, however, some inconveniences still in the working of the law. Some months ago, for example, I had a letter from a minister of one of the bodies for whose relief that law was passed, namely the Covenanters; it was to the following effect:—A gentleman came from Philadelphia to be married in Ireland; the writer of the letter had been acquainted with him for seven years, and with the lady for a much longer time, as she lived near him. About eight days after his arrival, the intending bridegroom consulted the minister as to the mode in which he must proceed in order to get married. The minister accompanied him to the office of the district registrar, where they found that each of the parties must make solemn declaration of having attended a *particular place of worship for one month immediately preceding the giving of such notice.* Of course the American could not with truth make any such declaration; and to remain in Ireland till he could do so, would detain him beyond the time when his business required him to be at home in Philadelphia. Both parties were members of the Covenanting church, and of the highest character; the minister knew them both perfectly, and knew perfectly that there was no legal impediment to their union; and all the other requirements of the Act could have been complied with. The Registrar General was applied to, but could point out no way of obtaining relief. The parties were advised to go to Scotland, which they did, but found that the time it would cost to acquire a Scotch domicile would delay them quite as long. How they got over the difficulty, or whether they got over it at all, I know not. The Act allows a person to give notice after residing 15 days if the marriage is to be by licence, or seven days if without licence; but these provisions become quite nugatory in cases like the one I have been narrating; a month might as well be required for the period of residence, and such cases must be not unfrequent. Commercial travellers, seafaring men, and several other classes of persons, are often so situated that they can hardly remain even a week in one place. For them at least the demand of a month's continuous attendance at one and the same place of worship, is equivalent to a demand of a residence for a month in one and the same locality. This is one example of inconvenience in the working of the present law.

1538. In that case, probably, it was an individual inconvenience, but the general law with regard to protecting marriages as to publication and so on, giving the time of residence, was a desirable thing, though in this case it only affected the particular individual?—— Certainly such protection is desirable and even necessary, but I think the provisions are altogether too minute. If you attempt to provide for every little matter of detail in a general rule, you are almost sure to run foul of some case which you did not contemplate, and in which it becomes injurious or perhaps impossible to apply the rule. I think some arrangement might easily have been devised, embodying some general principles, and avoiding such provisions as are oppressive in special cases. I was going to mention another case that does not particularly affect the religious denomination to which I belong nor any of the other denominations for whose relief Sir Edward Grogan's Act was principally intended. A gentleman whose ordinary residence was in India or some of the distant colonies, had made an arrangement that he was to be married at a certain time, but he received a letter requiring him to start immediately for a distant part of the world—I forget whether for his own country or some other. He applied to the minister of the congregation to which the lady belonged, and found it was impossible to get legally married before the day on which he must start; nevertheless, he *was* married; and my informant said the only way he could conceive in which the difficulty could possibly have been got over was by a fraudulent antedating of the notice, which he had reason to suspect was done. The fact was, the man got married and went away at the day his unexpected summons required him to go, whereas if the notice had run its regular time, *bonâ fide*, he could not have been married. A case occurred with myself prior to 1844, which, if it had occurred after the Act of that year came into operation, would have been one of great hardship. At that time the law of the land allowed very great latitude, in fact far too great latitude in the celebration of marriage, but the law of our Church was very strict; it insisted on the publication of banns; and a minister who should have ventured to marry a couple without it, would have exposed himself to very severe censure. Well: a pair came to me wishing to be married. They wanted to proceed to America; the man's passage was paid for. They had been attached for a considerable time, but could not make up their minds to take the decisive step (I suppose from prudential considerations) till within some 48 hours of the ship's sailing. They brought me a letter from an elder of the congregation to which they belonged (and which at the time had no minister) stating that in the circumstances he requested me to dispense with the "proclamations" and marry them at once. I knew I was perfectly justified by the law of the land in doing so, and as the old elder was known to be a great stickler for rule and order, I felt I was pretty safe in breaking through the law of the Church when I did so at his request. So I married them. I mentioned the circumstance at the next meeting of our Presbytery, and got an act of indemnity at once. Under the circumstances, the Presbytery said they thought I was justified in adopting that course.

1539. (*Sir H. Cairns.*) That was before the Act of 1844?——Yes; had I done such a thing after the Act of 1844 came into operation, I should have exposed myself to the penalties of felony. [*To the Chairman.*] The Bill of Sir Hugh Cairns contained provisions to meet such cases. He proposed that, on its being shown by evidence on oath to the satisfaction of two justices, or of a magistrate having the powers of two or more justices, that compliance with the ordinary rules could not be required without great injury or danger to the interests of the parties, such justices or magistrate should be empowered to authorize the immediate issue of a licence, and also to dispense with the publicity of a place of worship, and authorize the celebration of the marriage at any convenient time or place (*Bill of* 1862, *Part VIII.*). Some such provision is urgently wanted.

1539*a*. It would be analogous to the licence of the Archbishop of Canterbury?——Yes. But I think the primate's licence cannot be obtained, at least in Ireland, except by certain persons of high rank, and it certainly requires a heavy fee, whereas cases of real urgency are more frequent among people of the middle and lower ranks.

1540. (*Lord Chelmsford.*) In what respect do you think the provisions are too minute at present?—— I think it is quite useless to be so finically minute with regard to the times and places. For example, if the intended marriage is adequately published in the district or districts where the parties reside, I see no reason

they should not be allowed to have it celebrated different district. Here is a case of inconvenience ch actually arose lately from the want of such y :—A covenanting meeting-house in the county Antrim stands close to the boundary line of the rict to which it belongs, and a large portion of the regation reside in the adjoining district. Two ple belonging to this portion were to be married; Registrar of the district in which the meeting-se stood could not receive the notice because her party resided in his district; the Registrar of district in which they *did* reside could not receive notice because the place of worship was not within district. I suppose the difficulty was got over in e way; probably they were married in the Regis-'s office, or borrowed a Methodist chapel for the sion; but it is very bungling legislation that tes such difficulties by such over-minute provi-s. And in the case I was mentioning a little (1537), to require that a person shall have at-ded one and the same place of worship for the th immediately preceding the date of notice is use-minuteness. It is obviously designed to ascertain person's connection with a religious body, but it is ry unskilful way of doing so. Again, so minute racy with regard to the length of time during ch a person has resided seems unnecessary. A man ht not have resided within a particular district for seven days or 15 days immediately preceding the ng of his notice, and yet it might be perfectly easy ave it certified by some competent authority, a cler-an or a magistrate, or any other trustworthy per-that there was no objection to the marriage; and ourse the object of requiring residence is to ascer whether there be any objections.

541. These exceptional cases might very easily be ered by something analogous to a special licence? —Yes, where there occurs a really and unavoidably eptional case.

542. (*Sir H. Cairns.*) Some high dispensing power ch would apply to all denominations: such a case, instance, as a death being apprehended where it ht be an object to the parties to get married?—— , that is legitimately and unavoidably an exceptional e, for which such a dispensing power is necessary. also is the case of a person suddenly called off to istant country. But a multitude of exceptional and oying cases have been created by unskilful attempts regulate matters not essential to the proper objects egislation on the subject, which are just two, namely, uard against improper marriages—and to protect the its of the parties married and of their descendants. neral rules ought always to be framed so as to avoid much as possible the necessity for exceptions. There case about which I am at this moment interested, which annoyance and delay are being created by excess of minute provisions about non-essential tters. A young woman, a native of Coleraine, and o has lived there the greater part of her life, has for last few years been residing as a teacher in one of model schools at a considerable distance. She is to married to a young man who resides in Belfast. r home has always been in Coleraine, and she has e there to be married, as is right and seemly, out er father's house. She had been told that nothing re was required than to reside seven days in Cole-ne before giving notice. She thought even that was d, when she really belonged to Coleraine far more n to the town where she had been a stranger and a ourner. However, she made her arrangements ordingly, but now she finds she must reside a month, l thus the parties are put to considerable inconve-nce. These are circumstances that I think a measure ght easily be framed to avoid.

Here is another inconvenience of a different kind, sing from the same meddling with minute things. minister of one religious denomination, according to Edward Grogan's Act, may be prevented from cele-ating marriage as a substitute for a minister of another nomination, though requested by that minister. The nister celebrating the marriage must by that Act be of the same denomination as one of the parties. An instance of that kind occurred a few days ago in Belfast. An Independent minister came to me and said—"All "the ministers of my denomination are away in Dublin "attending the meetings of the Congregational Union, "and I want very much to go to Dundee on important "business. I have a couple to marry: will you be "kind enough to marry them for me in the Indepen-"dent Meeting House?" I said I would with the greatest pleasure; but the instant afterwards I recollected that I could not do so without committing a felony. Of course I was obliged to recal my consent, explaining that being a Presbyterian I could not legally marry two Independents. I did all I could (by letter and through our deputation, for I did not see him) to get Sir Edward Grogan to remove that absurd provision from his Bill, but he was inexorable.

1543. (*Lord Chelmsford.*) What would you propose to substitute for the law on the subject?——I think the law of Scotland for regular marriages, as amended by the Scotch Registration Act of 1854, is all that could be wished in that respect. The parties must give notice. The registrar then makes publication: the mode of publication is not perfect, but when it has been made, the parties may then be married by any person they please.

1544. (*Sir H. Cairns.*) Minister or not?——Well, it is always supposed to be a minister. I am not aware whether it is absolutely required.

1545. You are speaking of the law of the Church in Scotland?——No, I am speaking of the law of the land in Scotland. I have married people in Scotland according to those provisions.

1546. (*Lord Chelmsford.*) Not a regular marriage in Scotland. A regular marriage must be by a minister?——It is usually understood that it is by a minister or by some officer or functionary of a religious society, because the form of certificate is the same as that which we use in Ireland, and says, "Married according "to the usages of such or such a church." But there are religious bodies that have not ministers in the ordinary sense of that term. However, in the schedule of registration for regular marriages, it is assumed that the celebrant is a minister.

1547. (*Dr. Twiss.*) You would not have it requisite that one of the parties should be of the denomination of which the minister is?——No; that should not be required at all. The certificate states that they have been married according to the usages of the specified denomination, and takes for granted that it was by some minister.

1548. (*Sir H. Cairns.*) A minister of any denomination, without entering into the question of what persons were considered ministers of a particular denomination?——Just so:—I do not think there is any question of the kind raised.

1549. (*Lord Chelmsford.*) But the instances must be very rare in which parties would desire to be married by a minister of a religious denomination different from their own?——Very rare indeed; and the chief inconvenience we feel in Ireland, and from which they are free in Scotland, is more an inconvenience to ministers than to parties to be married; as in the case I mentioned where a minister of another denomination requested me to marry two of his people for him, and I could not do it.

1550. (*Dr. Twiss.*) There might be the case of a minister who was dead and no other minister appointed, and no other church?——If there were no other minister of the same denomination within reach, it would cause inconvenience. That must frequently happen with regard to the smaller denominations, I should think.

1551. (*Lord Chelmsford.*) Is there any other particular inconvenience or grievance which affects persons in your religious denomination?——I do not think there is anything else that I would call a grievance. There is an awkwardness, according to the present law, when one of the parties resides in Scotland; in that case there is a requirement in the Irish law with regard to the publication of banns,

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which is not in the law of Scotland. According to the law of Scotland it is required that the banns shall be proclaimed three times in the parish church. That has been reduced to a sham because they are proclaimed three times on the same day. There was a law for Ireland passed subsequent to 1844, I forget which year, supplementary to the Act of that year, providing for the case in which one party resided in Ireland and the other in Scotland. That Act required that the banns should be proclaimed three several Lord's days in the place of worship which the party frequented, not in the parish church. I had occasion two or three years ago to marry a gentleman residing in Scotland to an Irish girl; and the consequence was that he had to be proclaimed three times in his own place of worship—a United Presbyterian church—on three several Lord's days, which caused delay, and made the matter a town talk for three weeks, because the thing had not been customary for many years in the place.

1552. (*Mr. Dunlop.*) Supposing the bridegroom resides in Scotland, the certificate of proclamation in his own parish church would not be received in Ireland, would it?——No; it must be in his own place of worship; and the proclamation of banns three times in the same day would not be received in Ireland. In Sir Hugh Cairns' Bill it was proposed to change that, and to make a certificate of such a publication as would satisfy the law of Scotland, suffice for Ireland also.—As Sir Hugh Cairns has now left the room, I may say what I refrained from saying in his presence, that his Bills did him the greatest possible credit. He took the greatest pains with them. They cost him a great deal of labour, and displayed the highest legislative ability. They were admirable Bills, though they did not attempt all that he would have wished to accomplish, but only what he thought practicable; but they would have been an immense improvement on the existing state of things in Ireland.

There is another great objection to the present state of the law, not a grievance to any denomination, but a public inconvenience: there are by far too many persons registering. I think it would be a vast improvement if all marriages taking place within a district, were to pass through the hands of one and the same Registrar. There are somewhere about thirty Presbyterian ministers in Belfast; then there are a number of Episcopalian ministers, and Methodists, and Independants, and other denominations; each of these keeps a separate registry, and each of them receives a separate set of notices.

1553. Are they ultimately transmitted to one general registry?——Yes, to the Registrar General in Dublin, through the Registrar of the district. The evil is this:—If a man (as a member of our committee once said) suspects that his daughter is going to be married to his man servant, there are I know not how many different places where notices are given, and he must go round them all in order to ascertain whether his fears are groundless or not. It would be much better that in any given town or district there should be only one person who should receive all notices of marriages; and that that person should have the charge of publishing them. We found very great difficulty in devising a good mode of publishing. I think the method of publication which has been adopted in Sir Edward Grogan's Act, is the best hitherto suggested: it certainly is the best point in that measure, and it checks in a good measure the evil I have just mentioned. It was taken from the second of Sir Hugh Cairns' Bills. It is this: when a Registrar receives notice of a marriage he is bound under a heavy penalty to send a notice of it to the minister of the chapel or place of worship, in which the marriage is to be celebrated, and also one to the minister of each of the parties, so that if the parties belong to one congregation their minister must get notice, if they belong to two congregations the two ministers must get notice, and if the marriage is to be celebrated in a chapel different from that where they themselves worship there must be three notices given.

1554. One notice to the minister of the chapel?——Yes, if it be not the usual place of worship of one of the parties. The effect of that has been exceedingly good; and there is one remarkably beneficial part of the provision—the Registrar must do this even in a case in which the marriage is to be celebrated in his own office: the result is, that whereas clandestine marriages could formerly be celebrated in a Registrar's office with the greatest ease, now, on the contrary, since Sir Edward Grogan's Act came into operation this cannot happen, unless the clergyman were either very neglectful, or guilty of complicity with the parties wishing to contract a clandestine marriage. The practice of the Presbyterian ministers who marry under that Act, is, that on receiving such a notice they lay it before their sessions; and I presume that the deacons of Independent churches are informed in the same manner. This has the effect of publication. Of course any conscientious minister, on receiving a notice, would let the parents know, if he had the least doubt of their approving the match; and in that way I think this mode of publication is an exceedingly valuable improvement. The consequence has been that marriages celebrated in the Registrar's office have become far fewer in number now than formerly they were. As I have been obliged to find fault with Sir E. Grogan's Act, I feel bound in fairness to say that this valuable part of the provision is entirely due to him. I think, however, there is a great objection to trusting the registration to clergymen. A man may be a very good clergyman and a very bad man of business.

1555. (*Lord Chelmsford.*) It is a very simple business he would have to perform?——Simple enough, no doubt, especially after a little practice; nevertheless they are constantly making mistakes. Registrars have told me that they were continually finding mistakes committed by clergymen. Two remarkable cases occurred under my own observation. My church was lent to ministers of different denominations on four occasions for the purpose of celebrating marriages, and on two of those occasions blunders were committed which caused a great deal of trouble. On one occasion a gentleman who had celebrated a marriage passed over two spaces where he ought to have entered the marriage, and entered it in the third space; that which he ought to have entered as No. 9 he entered as No. 11. Another gentleman wrote in one of the books "father" for "farmer," as the profession of bridegroom's father, and omitted to make any entry at all in the duplicate book—the Commissioners are of course aware that each marriage is entered in duplicate. Then with regard to the Scotch law, I may say that I have had some opportunities of observing how it works, the church to which I belong being more a Scotch church than of any other part of the United Kingdom, and being myself a native of Scotland and having nearly all my relatives living there: and the conclusion I have come to is—that, as amended by the Registration Act of 1854, the Scotch law for regular marriages is what I should like to see adopted for the three kingdoms, engrafting upon it the method of publication, provided for Ireland by Sir Edward Grogan's Act. The questionable part of the Scotch law is that which regards the recognition and legalizing of irregular marriages; but most people who are familiar with the working of it, are not willing to see it changed in that respect.

1556. We have had a good deal of evidence on the subject, but perhaps you would not object to state what is your opinion with regard to irregular marriages?——I think there ought to be some mode of legalizing them. I think it is very hard that failure in conforming to any formalities, should prevent a marriage being legalized; and I am strongly inclined to think that, with all its inconveniences, I should prefer the Scotch law as it stands, though I give this opinion with a good deal of hesitation, and am not prepared to go into details. I am afraid it favours clandestine marriages; and perhaps it affords encouragement to some women to yield to seducers on

ount of the case with which the error can be cured. ese are certainly manifest inconveniences, but I am ined on the whole to say that the protection it rds to the female, and the risks to which it exposes seducer, balance these inconveniences, and that it etter than the law either of England or of Ireland hat respect.

557. Would it not be a very desirable addition ake to the law as it stands with regard to irregular riages, to require that they should be registered? -Certainly; but as I understand the matter, that is dy done by the Act of 1854. That Act requires they shall be registered at the same time they are gnized; the same deed that legalizes them, pro- s for their registration.

558. Otherwise parties not within the Act of 1854 contract an irregular marriage, and keep it per- ly secret. There may be no registration, no record t at all, and that is not a desirable state of things? -No; but I don't see how you are to get hold of gular marriages to register them; the irregularity lies secresy. I think it would be well if there e some enactment compelling registration within nited time after the irregular marriage is celebrated, annulling the marriage in default of registration, imposing a penalty.

559. (*Mr. Dunlop.*) Then you would have the e of the marriage definite and fixed?——Yes.

560. Not running over a series of years by what is ed habit and repute?——No; I think there is a culty. There is one thing that strikes me with rd to these irregular marriages, which I wish to tion:—At present the law of Scotland legalizes an gular marriage by two processes, the one is the con- ion and the other is the declarator. In the case of confession the two parties join; in the case of the arator either of the parties compels the other to nize a marriage which has been irregular. Now former implies that both parties, the latter that one hem, wishes to have the marriage legalized; but ppears to me that when two people are living ether in such circumstances that their neighbours not know whether they are married or not, it would well if there were a third process by which the law ld compel a settlement of the question. I mean when neither of the parties seems disposed to ve, there should be an enactment giving to some rd party holding some official position—say to the istrar—the power of compelling, and making it duty to compel, a settlement of the question ether the parties were living in a state of mar- ge or concubinage: that is to say, if such official that he could establish a marriage "by repute," it uld be his duty to do so, and to have it registered hwith, on the ground that it is a public scandal *contra bonos mores* to have people living in that ivocal condition. I should even be disposed, if the of of a marriage by repute failed, to consider iously whether in the case of a woman who could w that she did *bonâ fide* believe herself to be rried, and had good grounds for the belief, it might be proper to compel a regular marriage or confes- n, or obtain a declarator. It would be the registrar's erest not to neglect this duty if it were assigned n; and, to encourage him further, he might be paid nething above the usual registration fee.

561. I suppose in many cases the confession is lly all that constitutes a marriage?——In most cases should think that is so. It often happens that ties who have gone through no previous ceremony marriage go to a magistrate and declare that they e married persons, in which case the law winks at at is an untruth in the proper legal sense of the rd "married."

562. That is just a substitute for the ceremony of ——?——Yes, and hence the popular idea that Scotland magistrates can celebrate marriage.

563. And it is the ceremony of marriage?——Yes; tually, though not technically. There is one very important question which is likely to be raised in connexion with this subject, and that is the question whether we ought not to make the ceremony of marriage in all cases a purely civil contract, which may be followed, if the parties so wish, by a religious ceremony. That is a thing which I should deprecate in the strongest manner. I think the proper course is to take it for granted, though in some cases it would be but a legal fiction, that there is a religious ceremony, and to let the civil officer register the fact of that ceremony, and let that registration be what gives validity to the marriage. It would not suit the religious sentiments of this country, and it would tend to endanger the moral tone of society with regard to marriage, to place the civil part of the transaction in the foreground, and make the religious part an occasional and unimportant appendage.

1564. (*Lord Chelmsford.*) In Scotland what are called irregular marriages are all of them nothing but civil contracts?——But then they are irregular.*

1565. They are irregular but they are valid?—— I do not object to making them valid. I should not object to recognize as valid, a contract in which there was no religious ceremony nor any recognition of religion; what I object to is this, not only making an express provision for a civil contract, but making that civil contract the one thing needful, and ignoring religion altogether—merely permitting the religious ceremony to come in afterwards as a superfluous *additamentum* for those who have a fancy for it.

1566. You cannot very well render irregular marriages valid, unless you sanction the civil contract without any religious ceremony superinduced upon it?——There is such a thing as winking at it.

1567. Winking very hard?—— Well, perhaps I have used an unsuitable word. "Winking" is scarcely a correct expression here, for perhaps it would imply that the law enjoins a religious ceremony in all cases, and professes to enforce it but in practice overlooks it. Now that is not what I want. I wish the law to *presuppose* a religious ceremony, but not *inquire* into it; simply to take for granted that there has been such a ceremony, in virtue of a usage anterior to the law, and to register the marriage without inquiring into the form that has been used. But I go farther even than that; I would authorize a purely civil contract, and recognize it as not only a valid but a regular marriage. What I object to is making the religious ceremony a thing of no binding power, and compelling everyone to treat marriage as an ordinary business transaction. There are two things to be secured; *first*, a deliberate contract between the parties; *secondly*, a proper registration of the contract when made. The *first*, the contract, should be either a religious or a purely secular ceremony, as the parties choose; and the *second*, the registration, should be exactly the same whether the ceremony has been religious or secular. In no case should there be two ceremonies. I cannot help thinking that this is the safest course to follow. To do away with the religious ceremony as a rule, would be to take away from many minds that impression of the sacredness of marriage which is so salutary, and I must add so correct. During the time that the oppressive enactments which Sir Edward Grogan's Act removed, were in force, some of our denominations could not conscientiously register their places of worship, and some of their people were obliged to be married in the Registrar's office. I have known women say that they felt it exceedingly unpleasant;—that, in fact, they scarcely felt that they were married at all. There was perhaps something of a

* In revising my evidence for the press it occurs to me that I was wrong in admitting, as this answer implies, that all Scotch irregular marriages are mere civil contracts. I apprehend that a marriage without proclamation of banns, though gone about with the most solemn religious ceremonies, would be held irregular. And I have always thought that the declaration of two people before a magistrate that they are married persons, referred to a supposed previous marriage with a religious ceremony, though the whole thing was a mere legal fiction.

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superstitious feeling in that; still it would be very unfair to regard the idea of the sacredness of marriage as a superstition. I regard marriage, to use our Scotch ecclesiastical phraseology, as having its foundation not in grace but in nature; it comes from God as the God of Nature, not the God of Redemption. Still I think He ought to be recognized in it, and it ought to be regarded as an institution of His, by which man is distinguished from the brutes. I think all religious persons ought to have that feeling, though I have known some very religious persons who talked as if they had it not; but I am persuaded that every person ought to have that feeling, and I think it would be wise in the legislature not to run counter to the feeling, but rather to cherish it.

1568. (*Mr. Dunlop.*) Has it struck you that the prevalence in Scotland of the idea that consent makes marriage tends to lead young women to satisfy their own scruples and to yield themselves to men without any ceremony at all, and that they persuade themselves in their willingness that the united wills of two people, though not expressed in any form that can appear again, is sufficient, and that this reconciles their conscience to connexions which can never be proved?——I have often heard that statement, but always, I think, outside Scotland. I think that is the strongest objection to the Scotch law; at the same time it is urged on the other side that the Scotch law protects women against those who would seduce them by deluding them into a belief that they are married. I have heard it urged in favour of the Scotch law that it is founded upon the Mosaic law on that subject, which says explicitly, "If a man "entice a woman that is a maid and lie with her, he "shall truly endow her to be his wife; he may not "put her away all his days."

1569. (*Lord Chelmsford.*) That is not the law of Scotland, because, unless cohabitation takes place under such circumstances that the relation of man and wife be established, it is mere concubinage: he may entice the maid, and he may lie with her, but it may amount only to concubinage after all, the relation of man and wife not being established?——Cohabitation after promise of marriage, is marriage, and a promise of marriage is the most frequent means of enticing.

1570. That will not do unless the promise is in writing. By the law of Scotland the promise must be in writing, and the subsequent intercourse as man and wife, the *subsequens copula*, constitutes the marriage?——Then I have been mistaken on that point. I always understood the proof must be rigorous; but I thought it was sufficient to produce strict proof of a verbal promise. Suppose a man were to give a promise before two witnesses?

1571. That would not do; it would not constitute a marriage even though followed by copula; it is a mere promise, a promise *de futuro*. Consent in the presence of witnesses *per verba de præsenti* constitutes marriage, but a promise *per verba de futuro, subsequente copulâ*, unless the promise is in writing, will not establish the marriage?——I was not aware of that destruction; but to return:—The extreme of superstition which regards marriage as a sacrament on the one hand, and the opposite extreme of sinking it to a merely civil contract, like the purchase of a house or beast, on the other hand, seem to me to be both very wrong, and I think the truth lies between these two extremes. I think there ought to be a recognition of God by a religious ceremony. It ought to be assumed and taken for granted that everybody in this Christian land, will get married in a Christian manner, but it ought not to be enforced, and if anybody chooses not to do so,—if any body chooses to say, "I "have conscientious objections to anything but a "civil contract," let it be provided that he may act according to his convictions. Such a person would not necessarily be an enemy of religion. I have known very religious people who objected to anything but a civil contract.

1572. (*Mr. Dunlop.*) You would not like to see established the civil marriage as the general rule provided for by the State, with the mere *allowance* of the adjunct of a religious ceremony?—Certainly not; there ought to be more than mere allowance. To make the religious ceremony a mere superfluous adjunct, would pour contempt on religion, and desecrate the most sacred of all human relations. I would have the law framed so as to take it for granted that a religious ceremony is the way in which the marriage contract has been made, and will continue to be made, and at the same time I would make provision in one way or another for recognizing as valid a mere civil contract, if people insist upon having it done in that way.

1573. (*Lord Chelmsford.*) Is not then the law of promise *subsequente copulâ* very likely indeed to prove a snare to a young and ignorant woman. She might believe that a verbal promise would be sufficient; she might therefore yield upon a promise of subsequent marriage?——I admit there is great danger in that. The necessity of having the promise in writing makes the matter worse, as a girl would be apt to overlook that circumstance. Theoretically that appears to me a very strong objection, and always has, even though I was under the impression till just now that a verbal promise, if fully proved, was, *subsequente copulâ*, a marriage. A girl has heard that a promise of marriage is as good in law as marriage: a man gives her such a promise, and presses for the immediate possession of her person: even if a verbal promise *were* sufficient she would run great risk in yielding, from the difficulty of proof, but this difficulty and risk she cannot appreciate; she has a strong and generous affection for her lover, and unbounded confidence in him; in a moment of strong mental emotion, and perhaps of physical excitement, she gives away: but since the promise must be in writing, and since no one girl in 10,000 is likely to be aware of that it is most natural to conclude, *à priori*, that the law is more of a snare than a protection. At the same time there are theoretical objections on the other side; and when I see that the opinion of those who are practically conversant with the working of the law—lawyers and clergymen who have resided long in Scotland—is for the most part very strongly on the other side, I am afraid to condemn the existing law merely on *à priori* considerations. The subject was up in our own synod at at Edinburgh last May, and I see it has been up before the Free Church Assembly; and in both bodies the opinion seemed to be very decided that the Scotch law on this point is better than the English.

1574. (*Mr. Dunlop.*) I think it is generally supposed to be a protection in rather a higher class than those among whom illicit intercourse is supposed to be common, people like governesses and educated young women who might be led away by a promise might be ignorant of the necessity of having it in writing?——I have understood that it is supposed to be a protection to women in general, and if so, then that is an argument strongly in favour of it. I suspect, however, that it is less of a protection now than formerly; I suspect seducers are better acquainted with the law, and guard against committing themselves. I have not before heard the idea of its being a protection more effectual or more needed in the case of young women of the higher class, but I can see that it is likely to be so.

The principles on which I conceive that a well constructed and well considered marriage law should be founded, are very concisely set forth in one of the documents issued by our Association, and I should wish to take the liberty of reading them.

"I. The functions of a government or legislature in reference to the celebration of marriage, embrace only the following points:—(1.) To guard against two parties forming a contract whereby the just and legal right of a third party are invaded, and damage done to the interests of society at large. (2) When a proper contract is formed, to protect the rights conferred by it, on the parties and their descendants.

I. In order to gain those two points:—(1) The ought to provide means whereby, before the ation of a marriage, all persons whose rights it is to affect, shall have due notice of it. (2) There to be established an efficient and uniform system gistration, and strictly enforced on all persons it distinction or indulgence, as in the Registration assed in 1854 for Scotland.

II. All religious denominations ought to have t liberty to celebrate marriage according to their orms.

V. No relaxation of the general rules, established essary for the general good, ought to be obtain- y interest or purchaseable by money."

e fourth and last of these statements is directed t the existing practice of granting "licences" on nt of certain fees, and "special licences" for which ore heavy fees are taken, and which are attain- nly by privileged classes.

these four principles I would now add a namely, that a religious ceremony, though not *ed*, ought to be *assumed* as constituting the ct; that is to say, the notice should be assumed template a religious ceremony, and the registra- should assume that a religious ceremony has place; at the same time there should be a ion whereby people objecting to any religious ony, should be allowed, if they choose, to marry ie other way or form, before a magistrate or the registrar.

5. You stated a little while ago that there were where a licence, or a dispensation from some of quirements of the law, might be allowed; that I ne would be on cause shown and not on payment igher fee?——Yes; cause shown to the satisfac- f some proper tribunal, such as the second Bill Hugh Cairns provided. The moral effect of the n of granting licences for fees, is in every way very First, exemption from compliance with the l rules which the law lays down for the good of y, is thereby made a privilege of rank and wealth, t conformity to the law becomes a stigma of ty or vulgarity, and departure from it a mark of ity. I am glad to learn that it is becoming nable in the higher ranks in England to eschew es and be married by banns. This is as it ought ; the highest in station ought to set an example ct conformity to law. Secondly, the licence is ed on the oath (or declaration equivalent to an of one of the parties; this affords facilities for y. Thirdly, as the fee goes into the pocket of rson who grants the licence, he is exposed to ation; it becomes his immediate interest to grant ny licences as possible, to connive at improper ages, and at fraudulent evasions of the law. Thus ystem of licences "obtainable by interest or rchaseable by money" has an evil moral tendency action on the grantor of the licence, on the ns to whom it is granted, and on the feeling of y at large.

e worst feature of the existing law of marriage in nd, is the way in which it bears on Roman lic marriages. A Roman Catholic clergyman arry, at any hour of the day or night, in any place, ithout any notice, and he is not bound to register. e is an Act, passed in 1862 shortly after the ag of Sir Edward Grogan's Act, which permits, oes not compel, the registration of those marriages. Act is so worded as to apply only to marriages rated by Roman Catholic clergymen, though it pressed in terms so perfectly general that no would suspect this unless he were well acquainted the previous state of the law. It enjoins the tration of all such marriages, but there is no lty enforcing registration, and the consequence at a Roman Catholic clergyman is at liberty to ter a marriage which he celebrates, or not, just e pleases.

76. (*Lord Chelmsford.*) That is a distinction een Protestants and Roman Catholics, in favour of the Roman Catholics; that is all?——Yes; in those four points—time, place, notice, and registration—they are more favoured, in so far as to be free from control is to be favoured; but they labour under the disability of being forbidden by by law to celebrate marriage unless both parties be Roman Catholics, and this state of matters has been attended with very great evils. A Roman Catholic man has gained the affections of a Protestant girl, and he insists that they shall be married by his own clergyman, and insists upon it till she gives way, not knowing that such a marriage is illegal. So he can desert her with impunity if he likes; and he can use this power to compel her to conform to his religion. A case of this has occurred in the family of a friend of mine. He had a maid servant who was a Protestant of the Established Church, and was to be married to a Roman Catholic. Her master said to her, "Now, are you aware that a priest cannot legally "marry you? You must get married in church by "your own clergyman first, and then I will bring the "priest here to the house and ask him to breakfast "with me, and he shall marry you decently with the "forms of the church to which your intended husband "is attached." The young man utterly refused this; he would not insult his own clergyman in such a way. On being told of this by his wife, my friend said to the girl, "Well, if you cannot be married in that way, go "to the registrar's office, and go through the form "there; that will be legal, and then I will bring the "priest here and treat him as well as any gentleman "can be treated, and he shall marry you decently." The young man refused even this. He would have the marriage celebrated by his own clergyman, and by his own clergyman alone; and the girl consented. Very soon she found out that she was not legally married, and she was coerced to become a Roman Catholic in that way. I believe the instances of that kind which occur are very numerous. Mr. Scott Porter, whose name has been given in as one of the persons to be examined, is very well up in statistics of that kind, more so than anyone I know since the death of the late Dr. Montgomery, who had collected many notable cases.

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1577. You would not desire, then, to change the law with regard to mixed marriages, would you?——O, yes; I certainly would. I would allow a Roman Catholic clergyman to celebrate mixed marriages, just as I claim that I should be at liberty to do the same thing; but I would insist upon his being subject to the same rules with regard to time, place, notice, and registration that all Protestant clergymen of all denominations are subject to. There was a bill brought into the House of Commons by Serjeant Armstrong in the present session which has been withdrawn. It proposed to give to Roman Catholic clergymen the right to celebrate mixed marriages without any sort of obligations as to notice and registration, or hours and places. As to the expediency of confining the celebration of marriage to places of worship and registrars' offices, opinions are divided; but I am inclined to believe that it would be better to have no restriction. I do not think there is any inconvenience in Scotland, where there is no restriction as to place or time. With regard to hours, I know that in Ireland, where marriages must be celebrated between 8 in the morning and noon, if in the established church, or between 8 in the morning and 2 o'clock in the afternoon if in other places, I know that injurious moral effects arise from the practice. Sometimes, where people of the lower class get married, they waste a whole day, and often spend it in driving from one place to another, and drinking at different public-houses, and engaging in a great deal of folly, and incurring wasteful and useless expense. In Scotland, at the end of his day's work, the working man goes to the bride's residence at 6 or 7 in the evening, and gets married quietly, and then goes home quietly, and comes to his work the next day, without any disturbance.

1578. (*Dr. Twiss.*) He gets rid of the marriage feast?——Not necessarily; he may have a marriage

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feast, and generally has; but it is on a moderate scale, and the feast does not consume the whole day.

1579. (*Lord Chelmsford.*) Is there anything else which occurs to you with reference to this subject?—No, I do not think of anything else at present. I just wish to mention, as chairman of the committee of the Marriage Law Association, which sent your Lordship a list of men whom it would be desirable to have examined, that I ought to have suggested the name of the Reverend Mr. M'Clure, of Londonderry, but it escaped me at the time of the meeting. He would be able to give very valuable information on all points. He has paid particular attention to the relation of the law of marriage as between this country and the colonies, more in fact than any person I know of.

ADDENDA.

I. In my evidence while I admitted the questionable character of the law of Scotland with regard to irregular marriages, I ventured to express a very strong opinion that its provisions for regular marriages, as amended by the Scotch Registration Act of 1854, but with a different mode of publication, ought to be adopted for England and Ireland, *i.e.*, the clergy of all denominations should be relieved from attending to the civil transactions connected with the celebration of marriage; *i.e.*, that an Act should be passed for England and Ireland providing (*a.*) that in all cases notice of an intended marriage be given to the registrar, and by him published; (*b.*) that if, after a fixed time from the date of the notice, no objection be lodged, the registrar shall issue a certificate to that effect, and that on the production of this certificate the marriage may be celebrated in the presence of witnesses, by any minister, or according to the usages of any religious denomination; (*c.*) that the registrar have sole charge of the registration, and be armed with power to enforce it; (*d.*) that for persons who object to any religious ceremony, some other mode having sufficient solemnity and publicity be enacted.

In connexion with this I also said that a petition in favour of such a measure as I have just indicated had been sent to the House of Commons by a number of the clergy of the established church of the diocese of Ardagh; it is contained in the twenty-second Report of the Committee of that House on public petitions, delivered 20 May 1861. The following is the most important part of it:—"That "your petitioners beg leave to suggest to your Honour- "able House that the rules and regulations as to the "antecedent notices, the hours, and the buildings "within which the marriage ceremony may be per- "formed, the compulsory registration of the same, "and the penalties by which such rules and regula- "tions may be enforced, should be similar in all "cases, and that then it may be competent to any "minister of the different Christian denominations to "marry any parties conforming to the rules and "observant of the restrictions prescribed, whether "belonging to his own communion or otherwise."

This petition was presented by Mr. Lefroy [illegible] was signed by—

"Augs. Wm. West, A.M., Dean of Ardagh, [illegible] Chancellor of Kildare Cathedral.

"J. Le P[oer] French, A.M., B.D., Rector [illegible] "Temple Michael," and 14 other clergymen.

I stated, and take the liberty of now repeating [illegible] such a petition does the highest honour to the [illegible] sense, the enlarged views, and the Christian [illegible] Catholic spirit of these clergymen.

II. A registrar residing at some distance fr[illegible] Belfast, and to whom I had written, but whose ans[illegible] I had not received before sending off the proof of [illegible] evidence, has furnished to me the following addition[illegible] example of the inconvenience caused by over minut[illegible] ness in regulations. A covenanter's meeting-hou[illegible] stands near the boundary line between two distric[illegible] which I will call A and B, but clearly within distri[illegible] A. Two parties, both members of the congregati[illegible] to which said meeting-house belongs, wish to [illegible] married therein, but they both reside in district [illegible] They go to the registrar of A, who cannot take t[illegible] notice because neither of the parties live in his di[illegible] trict; they go to the registrar of district B, and [illegible] cannot receive the notice because the meeting-hou[illegible] is not in his district. How the parties got marri[illegible] my informant could not tell.

III. This registrar, a highly intelligent man, co[illegible] firms, in the strongest terms, what I have said of t[illegible] frequency of serious errors committed by clergym[illegible] in registering marriages. He says, "I might ref[illegible] "to scores of them within my own knowledge." H[illegible] mentions one recent case in which the entry in t[illegible] register book, contained no names of witnesses, a[illegible] before the omission was detected, the parties h[illegible] emigrated. He seems not very sure whether t[illegible] marriage was not celebrated without any witnesse[illegible] at all events, he says, "the witnesses are unknown[illegible] He gives another case in which a marriage was n[illegible] entered at all in *either* of the duplicate register book[illegible] and the omission was unnoticed for several week[illegible] —and worse and worse—in the interim, the numbe[illegible] in the book had been filled up with other marriage[illegible] He refers to multitudes of minor errors,—such [illegible] giving the employment of the bride's father to t[illegible] bridegroom's father, and *vice versâ*, entering the o[illegible] *cupation* in the column for age, &c., &c.

In short, though he feels delicacy in giving nam[illegible] and details, he proves clearly, that most ludicro[illegible] and mischievous blunders are of constant occu[illegible] rence. This fully confirms my view that the who[illegible] matter of registration should be entrusted to a civ[illegible] officer, directly and completely responsible to t[illegible] executive; and that no clergyman of any denomin[illegible] tion should have anything to do with it, partly b[illegible] cause the executive cannot and ought not to ha[illegible] such control over him as to ensure accuracy; part[illegible] because no man can be expected to perform a wo[illegible] which falls to him only occasionally, as well as [illegible] person whose sole or principal occupation it is; an[illegible] partly for the reason stated in my evidence,—viz[illegible] that the qualifications which go to make a good an[illegible] useful clergyman are not always combined with thos[illegible] which form an accurate man of business.

Saturday, 30th June 1866.

PRESENT:

RIGHT HON. the LORD CHELMSFORD.
RIGHT HON. the LORD NAAS. | The RIGHT HON. WILLIAM MONSELL, M.P.

LORD CHELMSFORD in the Chair.

J. T. Ball, Esq., LL.D., Q.C.

30 June 1866.

JOHN T. BALL, Esq., LL.D., Q.C., examined.

1580. (*Lord Chelmsford.*) You are the Queen's Advocate in Ireland?—I am the Queen's Advocate in Admiralty. There is no office in Ireland exactly corresponding to the office held by Sir Robert Phillimore in England.

1581. You are Vicar-General of the province [illegible] Armagh?—Yes; and I may mention that [illegible] Ireland the marriage jurisdiction is still vested [illegible] the vicars-general. I have original jurisdiction [illegible] the dioceses of Armagh and Clogher, and [illegible]

ate jurisdiction from five suffragan bishops; s to say, I am either by original or appellate ction the matrimonial judge for the north and f Ireland, for Ulster and Connaught.

2. Of course you have had considerable ex- ce of the working of the marriage law in Ire- ——I have had more experience as counsel than r-general; for it is only recently that I have icar-general; since the present Primate was ted. As counsel I have been engaged for some in almost all the marriage cases which have ried in Ireland, and though not numerous, some n were very important.

3. Is there anything in the operation of the ge law to which you desire to call the attention commissioners with a view to its amendment? rtainly; but perhaps I may be allowed first to n how the law stands. 1. Marriages may be ated in Ireland by a registrar after certain pre- ries prescribed by statute, no matter what may religious persuasion of the parties. 2. Leaving or the present this mode of contracting mar- I shall state the others. When both parties embers of the Church of England their mar- if constituted by a religious ceremony, must in d in order to be valid be celebrated by a clergy- piscopally ordained of the Church of England, after the publication of banns, or licence from car-general or his surrogate, or with certificate nce from the registrar, which is declared to be of banns. The marriage of members of the h of England by religious ceremony, cannot be ated by anyone else than such a minister as I mentioned. In a marriage by such a minister uiry is made as to the religion of the parties; marriage by him under the foregoing conditions d, no matter of what religious persuasion the s may be. For this reason a marriage by a man of the Church of England with either licence, or the previous requisite proceeding the registrar, is the most safe and certain of e forms of celebrating marriage. You cannot ny question as to religion, and in fact cannot ny question whatever, except some very special ions connected with failure in some of those inary proceedings which I have mentioned. the marriage of Roman Catholics, both being n Catholics, may be celebrated without banns, it license, without notice, at any hour, in any no matter when or where.

4. (*Mr. Monsell.*) You mean by the civil law, would not say that the marriages of Roman lics as a matter of fact can be celebrated in that ——Yes, they can in Ireland; because in Ireland re excepted out of all the Acts of Parliament.

5. By the civil law. You do not mean to say here are not banns or licences?——No, they are cessary to the validity.

6. They are not required by the civil law?—— are not necessary. The person celebrating the ony must be in holy orders, and if he is, then arriage was at common law good; and now en Roman Catholics is in Ireland good. I ap- d that is the result of the decision of the House rds in the Queen *v.* Mills; and I think the celebrating might be a monastic person owing dience except to his own ecclesiastical superior. k it is only necessary for him to be in orders, at the marriage would be good although he were on forbidden by the Roman Catholic bishop to te in the particular locality where the ceremony elebrated. My opinion is that if a person being y orders of the Roman Catholic church, though e monk or friar, should, no matter at what hour, ut the slightest notice celebrate a ceremony of age between the very highest persons of the n Catholic body, that marriage would be good gal, no matter what might be the particular rules the regularity of it, made by the Roman lic bishops. Nor do I see how in a court of nything could be looked at, except the fact that there was an episcopally ordained minister present at the interchange of the *verba de præsenti* between the parties. Such, in my opinion, is the present state of of the law as regards marriage when both parties are Roman Catholics. Now as regards Presbyterians: Marriages, when both parties are Presbyterians, may be by banns; if one or both Presbyterian, by licence in a certified meeting house after certain notice prescribed by the Act of Parliament or licenses given by particular ministers, who are chosen in a particular manner prescribed by the Act of Parliament. It is not necessary to go into the minutiæ of the provisions of the Acts. For all other classes a provision is made by proceedings before the registrars. Jews are allowed to celebrate their marriages according to their own rules after certain preliminary proceedings before the registrar. Quakers are allowed to celebrate their marriages according to their own rules after certain preliminary proceedings before the registrar; and to all classes by the last Act, an Act which has made a considerable change in the law (the 26th & 27th Vict. cap. 27.), there is extended the power of celebrating marriage according to the usages of any church, denomination, or body of Protestant Christians by a minister of the church, denomination, or body to which the parties to the marriage or either of them shall belong, upon conformity to certain rules and certain provisions in the Act. With a view to the alterations which I would suggest, I have now further to mention that although a Roman Catholic clergyman can celebrate a marriage between two persons both being Roman Catholics, he is prohibited from celebrating it, if one of the parties shall either be or shall have professed himself within twelve months previous to the ceremony to have been a Protestant. (This is by 19 George 2. chapter 13., Irish.) Now it is plain that the validity of a marriage by a Roman Catholic clergyman ever since this statute depends upon this question,—what is the religious *status* of the two individuals before the ceremony? And it is equally plain that this introduces an element of great difficulty and great doubt into the question of the validity of the marriage. In illustration of the difficulty, I would refer to the Yelverton case, which I argued for Major Yelverton when it was heard in the Common Pleas in Dublin. One question which arose in that case on argument of a bill of exceptions was this, what *profession* is meant in the Statute? There were some expressions proved to have been used by Major Yelverton, which were sent to the jury as evidence, that although he was of Protestant parentage, Protestant descent, and Protestant education, and had within the year previous to the marriage attended divine worship in Protestant churches, yet he was in opinion a Roman Catholic. They were expressions of sympathy on his part with the Roman Catholic religion and system. For Major Yelverton we contended that nothing of this kind could constitute such a profession as the law contemplated at all; that what the law contemplated was a public profession of religion manifested by decisive and unequivocal acts. For the other side, it was contended that the belief of the mind would answer the whole obligation of the Statute, and that you were at liberty to inquire, although he might externally and in his public profession have appeared as a Protestant, whether or not he was not really, by conviction and belief, a Roman Catholic? The judges were divided on the bill of exceptions. Judge Keogh and Judge Christian took the view which we put forward for Major Yelverton, and held that the profession must be external and public; but Chief Justice Monahan expressly states in his judgment that the Courts considered that internal belief constituted the distinction between Protestant and Papist. (Thelwall *v.* Yelverton, 14, Irish Common Law Reports, 243.) I mention this case, and the disagreement of the judges to the Commission to show, that in the present state of the law there is involved a question of great difficulty. In my judgment the fact of a question of such extreme difficulty being involved in the application of the law, condemns the law. To have a theolo-

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gical inquiry requisite before you can ascertain the validity of a marriage is in itself objectionable ; to have that inquiry extended over so lengthened a period as 12 months, is still more objectionable. There is nothing in the present policy of the country which, in my judgment, necessitates the continuance of that law. There is no desire now to impose disabilities upon Roman Catholics. There is no wish on the part of anybody to do it. If proper legislative provisions be substituted, I see no reason for continuing a Statute in respect to which there are such difficulties of construction. I may mention that the other day there was a very curious case before the Irish judges—a case of alleged bigamy,—and in that case the question was whether the offence of bigamy existed when the second marriage was a marriage of a person found by the jury to be a Protestant by a Roman Catholic clergyman. In that case several of the judges expressed a very strong opinion against this Act of 19 George 2. It appears to me that if the Marriage Law is to be revised, this Act is one of which the provisions should be altered ; but I also think it would be very unwise to repeal the Act unless some provisions are substituted for it. The reason I think it unwise to repeal it without other provisions being substituted for it, is the state of the law as regards marriages by Roman Catholic priests, to which I have already adverted, the want of control on the part of the State as to their celebration, the want of preliminary notice, and the want of any legislative rules to produce order or propriety in conduct. If you take away that Statute, and all inquiries about religious profession, the common law recognizing the orders of a Roman Catholic clergyman, he would, it appears to me be competent to celebrate marriage between a Protestant and a Roman Catholic, and then the Protestant portion of the community would be subject to all the liability to improvident marriages by Roman Catholic clergymen which formerly existed prior to the Marriage Acts with Protestant clergymen, and which led to what were called couple-beggars ; and if I am right in my view that a friar or a monk, not one of the clergy properly or legitimately entitled to officiate, but a person who happened to have holy orders, and to be in Ireland, perhaps only transitorily, could celebrate a valid marriage, this consideration is of still more consequence ; for, in addition to what might occur from the parochial clergy, you would be subject to the liability of a person of that description celebrating a marriage between a Protestant and a Roman Catholic. So far, therefore, as my own opinion, I would oppose repealing the Act of the 19th George 2, chapter 13, unless the Roman Catholic clergy will agree that there be an Act passed introducing similar restraints upon marriages by Roman Catholic clergymen as are now imposed upon marriages by Protestant clergymen, viz., preliminary notice or some equivalent proceedings to necessitate time for deliberation, and something to lead to publicity and regularity as to hours.

1587. (*Lord Chelmsford.*) Would you apply that alteration of the law to marriages between Roman Catholics, or confine it entirely to marriages between a Roman Catholic and a Protestant ?——I am in favour of extending it to all. I say that it is highly objectionable, and I do not see how the parties, being Roman Catholics can make a difference, that there should be even a possibility of celebrating marriage under such circumstances as I have described. Besides if you make a distinction, you retain the religious test, which creates the legal difficulty of applying the present law.

1588. (*Mr. Monsell.*) Did you ever hear of a case of that sort ?——I never did, as between Roman Catholics. There was one before Dr. Radcliff, in which I was counsel, of a marriage of a Protestant with a Roman Catholic, and my recollection is that the parties, both professing to be Roman Catholics, went without the slightest previous notice in the evening to a Roman Catholic clergyman, not regularly officiating in the place, and were married. The marriage was broken in that case on the gro of the Protestantism of the husband.

1589. In all your experience you never hea a case ?——I now recollect a case between two R Catholics. There was a Mrs. Watte, who had ried a painter in London. She came back to Irel and on her husband's death she succeeded to a 16,000*l*. She was a person really of weak m She was married in a public house by a Ro Catholic clergyman on a Sunday under such circ stances that the marriage was afterwards broken on any ground connected with the religion of parties, but simply on the ground that a perso weak mind was on that day married under circ stances which, like those in the well known of Lord Portsmouth (i. Haggard, 356), and o cases of that kind, enabled the court to interp on the ground of weakness and proportionate circ vention.

1590. What was the date of that ?——Quite recen Dr. Battersby, the present vicar-general of Dub was the person who pronounced the nullity. I counsel against the marriage.

1591. Both those persons, of course, were Ro Catholics ?——Both Roman Catholics. I can h that case and all the proceedings furnished if desire it.

1592. (*Lord Naas.*) If that person had bee person of sound mind the marriage would have b good ?——Perfectly good. That is the only I have known of litigation to invalidate a marri between two Roman Catholics for anything connec with the circumstances of its celebration, or even the position of the parties.

1593. (*Mr. Monsell.*) Admitting that excepti which I never heard of before, do you consi generally that there are abuses in Roman Cath marriages in Ireland ?——I do not know of th and even if they existed I am not likely to know them. They do not litigate the validity of th marriages. There is no use in their doing so. matter what there may be objectionable in the cumstances, a marriage of two Roman Catholics b priest could not be broken. If there had not b weak mind in that case of Mrs. Watte, her marri could not have been broken. What would be the of bringing forward complaints, when there is relief ?

1594. Do not you think that both Protestants Roman Catholics rather live in glass houses Ireland ; that they are rather anxious to find anything that goes wrong among the other, therefore that if there were these cases they w be very likely to be found out ?——I cannot speak to anything relating to the religious discipline of the Roman Catholic Church in Ireland as regards celebration of marriage, or how far it is practic observed

1595. It is a singular thing, is it not, that with all your experience, have never heard of case abuse ?——Yes.

1596. And you are perfectly aware that the co you suggest of making these alterations with re to Roman Catholic marriages would be most tasteful to the Roman Catholic people generally ?— I am perfectly aware it would to the Roman Cath clergy ; but I doubt if it would to the Ro Catholic laymen. My opinion is that the educ Roman Catholic laymen of Ireland would be co to have their system of marriages regulated in s degree by the State, not so as to interfere with constitution of marriage by a religious ceremony, so as in a certain degree to ensure providence deliberation in the contracting parties, and to en regularity in the proceedings. I have very l doubt upon that subject.

1597. (*Lord Chelmsford.*) Do you mean to then that the precautions which you have sugg with regard to Roman Catholic marriages would be objectionable to the people in Ireland ?——I

to any except the Roman Catholic clergy. That
ıy opinion.

598. (*Mr. Monsell.*) On what do you found that
ıion?——I have often discussed the subject with
isters of the Roman Catholic religion, and I never
ıd any of them in conversation object to some
s as to previous notice to some third person, or
o the hours for celebration being introduced in
ıexion with marriage.

599. But you were speaking of very stringent
s?——I do not call anything I propose, very
ıgent. I desire to ensure some deliberation and
e publicity, and in order to this would require a
ain number of days' notice, and the ceremony to
elebrated in the morning.

600. I presume that in order to make these pre-
ions effectual it would be necessary to declare the
riage null unless they were observed?——I do
know that it would. In the Marriage Acts there
annulling clauses for certain violations of their
isions; but a great deal of what is provided with
s only enforceable by discipline, by punishment
he person who disobeys, without invalidating the
ract.

601. Supposing that to do these things it was
sidered necessary that the absence of complying
ı the canonical hours, and so on, was to make the
riage null; you are aware that that would be alto-
ıer contrary to the doctrine of the Roman Catholic
ırch? It would be imposing an *impedimentum*
mens, and therefore would be objected to by the
gy as well as by the laity?——It could be made
ely an *impedimentum impeditivum*, and still there
ht be clauses of such a character as would lead as
eneral practice, to the observance of the regulations
he law.

602. Then you do not advocate these provisions
absolutely necessary?——The annulling clauses
not absolutely necessary, and I do not like press-
anything respecting which there would arise re-
ous feeling; and perhaps as to an annulling clause
e might be made strong objection, but such objec-
could not well be made if the penalty you attached
e a penalty calculated only to enforce discipline,
h as exists as to provisions affecting marriage by
testant clergymen.

603. (*Lord Chelmsford.*) Before an alteration of
is proposed surely it ought to be shown that
ses exist which require a remedy?——At present
19th Geo. 2. prevents any other persons except
man Catholics being married by Roman Catholic
gymen, and if you retain that Statute Protestants
e no interest in what is done about such marriages;
if you repeal that Act, and the Roman Catholics
now very anxious to have it repealed, and as I
e already told you several judges have expressed
ir opinion that it should be repealed, then it is
t it appears to me you cannot avoid change; you
st introduce some element of safety; it ceases to be
uestion affecting only Roman Catholics. Once
ct that the profession of Catholicism is to be a
fession dating only at the moment, and that if the
ties say they are Roman Catholics the marriage is
be good, and you will have Protestants taking
antage of this system, and simulating for the
ment the religion in order to be married; making
profession simply to obtain the ceremony.

1604. That was my reason for asking whether it
uld not be sufficient to restrict those precautions to
mixed marriages as we call them?——But, then,
w will you determine that it is a mixed marriage?
ıe party will profess Roman Catholicism for the
asion, and your jurisdiction will be entirely ousted.
ıe 19th Geo. 2. met that difficulty by requiring
months' profession. Abolish the 12 months' pro-
sion, and then it will be a marriage of any two
rsons who appear before the clergyman and say
ey are Roman Catholics; for how are you to test it
yond the moment? If you define no period during
ich the religious profession is to exist, the religious
ofession can only be required to be at the time;
and, if only at the time, then you will have no protecting clause or no protecting preliminary for those, who in order to contract the ceremony simulate for the time the religion. If you take away the 19th Geo. 2. and legislation of that character, you then take away your own test of religious profession; and you will open the power for the young and inexperienced, clandestinely and without deliberation, to contract marriage, simply by saying to a priest, "We "are at this moment Roman Catholics."

1605. (*Mr. Monsell.*) It has been suggested by the English Attorney-General that with regard to persons who are of full age there is no more reason for putting protection around them with regard to the marriage contract than with regard to any other contract. What would your opinion be on that subject?——I confess I think that is taking a very strong view. I believe it is opposed to most jurists who have written on the subject. The Marriage Acts, too, are founded on a different policy, although, curiously enough, the parental authority is not as much protected by annulling clauses as might have been expected. For myself, I doubt very much the policy of the Attorney-General's view. A very young man of large fortune, although above the age of 21, is led precipitately into an alliance utterly unworthy, and which if there was time for reflection and communication with his family he never would form; I think one feels this should not have been facilitated by the law. I think that all marriage law ought to aim at interposing some period of reflection between the first formation of the design and the ultimate accomplishment. I also think it should discourage clandestinity. Further, I cannot view the marriage contract as of the nature of contracts affecting property; I think society has a much deeper and more permanent interest in it. What the children shall be, depends on what are the parents.

1606. (*Lord Chelmsford.*) The feeling of the day seems to run rather strongly in favour of taking away every sort of impediment to marriage?——Yes. In the modern Acts of Parliament they have repealed the old Irish Act which prohibited marriage without the consent of parents in the case of persons of large fortune.

1607. (*Lord Naas.*) The time of publication varies very much, as you are aware, not only in the three countries, but also among the various denominations. Have you formed any opinion as to what you think would be the proper time that ought to elapse generally between the publication of marriage and the solemnization?——I think the present Acts of Parliament might be left as they are. I would merely apply the same provisions to Roman Catholic marriages that are applied in the case of Presbyterian or other Protestant marriages in Ireland. There ought to be so many days residence and so many days notice. The number of days residence and notice is in the Act. I forget at this moment exactly what they are, but I think the provisions have worked very well practically, and I never heard any complaint.

1608. But they vary to this degree, that with banns in the Established Church it takes three weeks?—— Seven days after notice shall have been given by one of the parties, who shall have resided not less than seven days next preceding in the parish named in the notice; that is the 7th & 8th Vict. cap. 81. sect. 2.

1609. (*Mr. Monsell.*) I think witness after witness here has told us that in large towns those banns were not of the slightest use?——I am speaking of licence.

1610. At all events the observation still would be correct, because your licence is a substitute for banns? ——Yes.

1611. (*Lord Naas.*) Do you go so far as this, that in all marriages you think it desirable that the knowledge at least of a third person should be required before the marriage is solemnized?——I do.

1612. That no marriage should be solemnized in which parties could go to the solemnizer, be he registrar or ecclesiastic, without, at all events, the necessity

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being imposed upon him of acquainting some other person?——Certainly I go that length.

1613. (*Lord Chelmsford.*) Then you must make some provision for notice to that person, or require the person who desires to be married to bring somebody with him as a vouchee?——I do not see that any alteration is requisite in the present provisions of the Statutes; they are very nearly the same as the English Acts; I am referring to the 7th & 8th Vict. cap. 81. and the 26th & 27th Vict. cap. 27. I think everything is provided for in those Acts. I think it is a bad thing to alter, because we are now working, and have been for sometime working these Acts, and the public mind has become familiarized with them, and the different officers who work them are familiar with them, and I see no object in altering their provisions. However, if there was much feeling on the subject, the periods might be somewhat shortened.

1614. (*Mr. Monsell.*) Do you consider that banns in large towns are an effectual guard against clandestinity?——I must tell you that there are very few marriages by banns in the diocese with which I am officially connected; they are almost all by license. We give licences for 5*s.* Occasionally there is a marriage by banns, but the licence is so cheap that marriage by banns is not usual. I very much prefer the licensing system to banns. When a licence is obtained, an oath is pledged to the propriety of the transaction. The person before whom the parties come has some power of interrogating them and inquiring into matters, which affords some degree of check on any impropriety.

1615. (*Lord Chelmsford.*) There is another opinion growing up very much, that the proper course to pursue with respect to marriage is to have the banns published?——Some persons have a religious view to that effect.

1616. That may introduce the publication of banns as a practice much more extensively than it is used now. As to banns, as Mr. Monsell has put the question, it is quite clear that in large parishes it is merely illusory, because the names are read out and nobody attends to them; and I am told that in St. George's, Hanover Square, the publication of banns sometimes lasts 20 minutes?——In England you will obtain results of much more experience of banns than I or any one from Ireland can offer. But in connexion with banns and licence I may observe that the language of the annulling clauses in the Statute is not very clear. I allude particularly to the words, "Or without due "notice to the registrar, or without certificate of "notice duly issued, or without a license from the "registrar in case such notice or license is necessary "under this Act," for the words "due" and "duly" have no interpretation whatever in the Act. What is meant by "without due notice," or what is meant by "without certificate of notice is duly issued" is a matter not decided by authority. I have known a case of violation of the provisions of the Act in the proceedings with the registrar, and even falsehood, and it is by no means certain what is the effect on the marriage.

1617. Surely it would be a very strong thing to annul a marriage, for instance, for default of a certificate of registration?—Default in the registrar's own conduct in my opinion does not affect marriage, and ought not; but falsehood by the party who hands in the notice involves other considerations.

1618. They are both; one follows on the other?——Yes; but what I say is, there is a want of definition to explain what is meant by "due," and I am illustrating it by a case which contained untrue particulars; and when you come to examine the case by the Act of Parliament there is nothing in the Act of Parliament to test what particular matters they are which suffice to vitiate a marriage. I think there ought to be something more explicit as to what is meant by the words "due" and "unduly" in these expressions.

1619. I think it ought to be where there is fraud in both parties, or where there has been a fraud practised by one party on the other, that the innocent party ought to be allowed to avail him or herself of the remedy?——Just so; but all I am advocating is definition in the Statute of what is meant.

1620. (*Lord Naas.*) Have any cases come to your knowledge where marriages have been annulled in that way?—No, I have never had a case brought into court, but the case I am speaking of may be brought into court; all I advocate is to have the meaning of the language defined, and not left as wide as it is.

1621. (*Lord Chelmsford.*) I should rather be disposed to leave it wide, and trust to the discretion of those who have to administer the law?——That is no doubt what has been done. There remains another matter to which I would wish to call your attention, I mean the Registration Act; that is, the 26th & 27th Vict. cap. 90. I think the provision to enforce registration as to cases not within the 7th & 8th Vict. is extremely weak. The parties are bound to bring to the officiating person a certificate, which is to be filled by the clergyman, the parties, and the witnesses, and is to be redelivered to the registrar, either by post or personally, within three days after; and the husband in case of failure so to deliver or send such certificate is liable in a penalty not exceeding 10*l.* I should anticipate that this would prove a totally illusory provision. Numbers would be so poor that it would be idle to attempt to levy any penalty from them. Then, also, many of them are ignorant illiterate persons, not understanding the matter. It would occur to me that the entire of that duty ought to be imposed on the officiating person, who is always educated and intelligent.

1622. (*Mr. Monsell.*) Why do you consider it to be illusory? Do you believe that if the police, for instance, received directions from the Government to summon any person who had neglected to comply with the provision of that Statute—do you imagine that in a very short time the Statute would not be generally acted upon throughout Ireland?——Well, if they did; but will that be done?

1623. Is that the fault of the Statute, or the fault of the Government?——10*l.* levied from an unfortunate man who has no means of paying——

1624. Not exceeding 10*l.*; it might be 10*s.*, might it not?——Even 10*s.* from an ignorant person. I would impose it on the party celebrating. That is the change I would make. I would impose on him the duty of having the certificate properly filled, and forwarding it. I do not see any difficulty in it. He could have these certificates ready, at his house, and fill them when the marriage took place, and then it is very simple for him to have them forwarded at the time.

1625. Are you able to account for the very different proportion of Roman Catholic marriages that are registered in different parts of Ireland to the population of those different districts?——I am not.

1626. Take, for instance, the different provinces; it appears that in 1865 there was in Leinster one marriage to every 1,889 of the population, while in Connaught there was only one to every 215 of the population?——I could not possibly explain that.

1627. I suppose the Protestant marriages are generally registered?——Yes.

1628. Therefore the discrepancy must arise with regard to the Roman Catholic marriages?——I suppose so.

1629. And so far as that goes it shows that the Act to that extent has failed?——I should infer that.

1630. Then the question I ask you is: have you ever heard of a single prosecution taking place under the Act?——Never; I never heard of a proceeding under it at all. I have heard a question raised, and I was asked what I thought of it. A Roman Catholic clergyman refused to fill or sign the certificate, and I was asked what in my opinion was the result. The view which occurred to me was that signing in name was a duty imposed on him by the Statute; and

it therefore it might be held a misdemeanor. I ould however much prefer a pecuniary penalty to a minal proceeding to enforce the law. I do not like a criminal offence out of a matter of that kind. . But still the point I want to put to you is : is it fair to say that this Act has in any degree : when the provision that was introduced deliber- into the Act for the purpose of enforcing com- ce with the provisions of it has never been put in e by the Government of the country ?——I did say it failed, for I have no knowledge whether it or not, nor do I think any person except the law icers or the Registrar General can inform you as to . I simply give my own opinion that to impose a naity on the husband is a weak provision to enforce law.

1632. You misunderstand the effect of my question ; have been endeavouring to show you that it has to a tain extent failed by the statistics I have quoted to . Then I say is it fair to put the partial failure in tain districts, which is obvious from those statistics at I have shown to you, upon the Act, when it pears that the Government of the country have ver taken the slightest means to put that Act in eration ?——There are many matters in Acts of rliament which Governments think it wiser and fer not to proceed by criminal proceeding to enforce.

1633. (*Lord Chelmsford.*) In many cases it would probably rather difficult for the Government to come acquainted with the fact of a marriage having ken place and no registration unless some communi- tion was made to them ?——I think so. I think also ere would be unwillingness in the case of a man of a y humble class of life who had married without oper registry to proceed against him, when it might arise from ignorance. How is an illiterate man to ow of this provision of the law if the clergyman or e officiating person does not take the trouble of forming him ? and there is no obligation on him to form him, though there is an obligation, if the certi- ate is brought to him, to sign it. How is that igno- t person to be brought up for a violation of the w? It would appear to me that there would be a eat deal of harshness in punishing him.

1634. (*Mr. Monsell.*) How does a man find out hat he is obliged to put a ring in the nose of his ig?——The police go about and tell him that, I

1635. If the police were to summon in these cases, lo not you think in the whole district the law would come to be perfectly known within three months ? ——Yes, perhaps it would ; but I think my plan of making the party officiating the responsible person would operate a great deal more effectually, for you would find that the law would not be violated by persons in that position.

1636. (*Lord Chelmsford.*) Do you think it would be a desirable thing to make the priest, or clergyman, or minister officiating at the marriage a species of local registrar ?——I do ; I think he should be compelled to perform the duty that is imposed by the 11th section on the husband.

1637. And forward the certificate to the Registrar General ?——Yes ; and if necessary I would give him some small fee for doing it ; and I would venture to say if there was a fee it would be done, and that you would thus secure to the State a perfect regis-

1638. (*Lord Naas.*) Are you aware that in Scotland the mode of registration is pretty nearly similar, inasmuch as the parties being married produce to the solemnizer of the marriage a form which he signs, and the document is transmitted by the parties contracting the marriage to the registrar ?——I am not aware what is done in Scotland.

1639. (*Mr. Monsell.*) Are you aware of the fact that the registration is tolerably close in Scotland ? —— I am not at all acquainted with the Scotch registration. There is one other matter I would like to mention. I see no object whatever in the provisions of the existing Acts that enable, or rather require, a clergyman of the Established Church, after certain preliminary proceedings before the registrar, to officiate and perform the ceremony. I think the clergyman of the Established Church should only be required to perform the ceremony after either a licence or banns ; the licence to be obtained from the vicar-general or his surrogates. I do not see the object of the introduction of the registrar at all for marriages celebrated by clergymen. Most certainly the members of the Established Church do not object to banns or licence, nor is there any object in their being brought before the registrar. There is no better system than that of a licence by the vicar-general or his surrogates. The vicar-general in Ireland must be a barrister of a certain standing, and the surrogates are appointed by himself. Any question that arises is immediately referred to him ; and he writes back his directions, and there is a time interposed sufficient for communication from every part of the diocese. This creates a very great safeguard, since the persons are obliged to come before either himself or his surrogates, and inquiry can be made from the parties and from others.

1640. (*Lord Chelmsford.*) You think that where the marriage is by the Church that all the preliminaries ought to be performed in the church ?—— I do.

1641. When it is before the registrar, by the registrar ?——Yes.

1642. (*Mr. Monsell.*) In that case which you refer to, where the person of weak mind was married, and the marriage was afterwards broken, do you recollect who the officiating clergyman was ?——I do not at present recollect his name.

1643. Was he a parish priest ?——He was.

1644. He was the parish priest of the parish ?—— Yes ; but as I recollect, the parties had not been in the parish any length of time.

1645. The real question, I think, with regard to the marriage law is this : does it work well or does it not ? You, I think, have stated that in all your great experience you know only one single case in which any irregularity has occurred with regard to Roman Catholic marriages ?——That is the only one that ever came before me in the way of practice.

1646. That is a strong fact, I think, that a person with your great experience and means of knowledge should only know of one single case of irregularity. You have been so good as to state that you will give us the particulars of that case ?——Yes.

1647. (*Lord Naas.*) Though a marriage of that kind might be celebrated in direct defiance of and violation of all ecclesiastical rules and discipline of the Roman Catholic church, yet still that would not in any way affect the validity of it in a court of law if it had been celebrated by a clergyman of the Roman Catholic church ?——That is my opinion ; if the solemnizer was an ordained clergyman of the church ; and I think that would apply even if he was a friar or a monk.

1648. (*Lord Chelmsford.*) I do not know whether you are aware whether the decree of the Council of Trent is authority in Ireland ?——I have heard that often discussed ; and, I believe that there is no diocese in Ireland into which it has not been introduced ; but I do not think that its introduction into the dioceses alters the law, or that the status of the parties, if the ceremony was performed, would be affected because its provisions had been violated. That has been my opinion always.

1649. Is there anything else that you would desire to say ?——Not with reference to the Irish marriage law ; but I should like to say a few words about Scotch marriages ; and I may observe that the traffic now between the north of Ireland and Scotland is so extremely great and intercourse so frequent that it is by no means unimportant to the Irish what is the Scotch marriage law. As far as Scotland itself and Scotch people are concerned, the Scotch guard against the singular facility which their law presents of constituting marriage, by extremely rigid rules as regards

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the proof of it. A marriage may be contracted *per verba de præsenti* in Scotland without a witness; but then the party cannot by his or her own testimony prove this in a Scotch court; whereas by selecting an Irish tribunal as the forum of litigation, it is in the power of either of the parties to come and prove the marriage for himself or herself. Now I say that is most objectionable.

16,50. In what proceeding would that be?——A suit for restitution of conjugal rights. Supposing one of the parties alleging a secret marriage *per verba de præsenti*, instead of selecting a Scotch court as the tribunal to decide the question, selects an Irish matrimonial court, then either he or she is competent as a witness to prove the entire fact of marriage, and to found the constitution of the marriage on the simple allegation of a secret interchange of consent *per verba de præsenti;* whereas in Scotland the same person would not be allowed to prove his or her own case. The Scotch are too wise a people to allow such a mode of proof. Now a marriage of this kind can be constituted equally between persons not domiciled Scotch as domiciled Scotch, if the interchange of consent be in Scotland; so that the consequences of this facility of proof outside Scotland are very extensive. Further, I see nothing to prevent such a case being set up to invalidate a subsequent marriage *in facie ecclesiæ;* and I would propose that the rules of evidence which the Scotch themselves think necessary in order to guard against too great facility of proof, should be adopted in our courts, and the parties forbidden by their own testimony to prove a secret consent.

1651. (*Mr. Macqueen.*) You mean that the Scotch law of evidence should be taken as well as the law itself?——Yes.

1652. It was not done in the Yelverton case?——It is not done in any case. That is the only observation, I think, and it is merely as to the media of proof in our own country, and not as to the constitution of marriage in Scotland.

1653. (*Lord Naas.*) In fact, the proof of a Scotch marriage in one of our courts is a great deal easier than in one of their own courts?——It is in the power of the individual to prove it for himself or herself; and it is in his or her power to prove it against a marriage *in facie ecclesiæ* with every formality; and no precaution on the part of the persons connected with those contracting the second marriage, can guard against such an allegation being brought forward.

Adjourned.

The following are the particulars of the two cases referred to in my evidence.—JOHN T. BALL.

ANNE GIBBONS - Promovent. ALEXANDER GIBBONS - Impugnant.

This case was heard before the Dublin Consistorial Court, 3rd December 1860. It was a suit for restitution of conjugal rights by the wife against the alleged husband. The parents of the husband were living. The wife of the husband, was a person of inferior station to the husband and at the time of the marriage was pregnant by him. The husband and his family were Protestants, and the wife and her family were Roman Catholics. The husband in his evidence states, that the parish priest refused to perform the ceremony, and then the parents of the wife named the Reverend Mr. Mannion, a Roman Catholic clergyman, who lived about nine or ten miles from their residence, but who does not seem to have been a parochial clergyman. The husband states in his evidence: "It was between 10 and 12 o'clock at night "when I went to the Reverend Mr. Mannion's house. "The Promovent, and her sister, and brother, and "brother-in-law accompanied." He then asserts that Mr. Mannion asked him no questions, but proceeded at once to perform the ceremony. The wife on the other hand, says, "That the Impugnant previous to the marriage ceremony, in answer to a "question put to him by said Reverend Mr. Mannion, "said, he was a bad Catholic." The marriage was held invalid, as the husband was a Protestant.

MARGARET WATTE, otherwise CODY, a lunatic, by Robert Exham, committee of her person, appointed by the Court of Chancery, Ireland - Promovent.

JOHN O'CONNELL, the pretended husband of said Margaret Watte - Impugnant.

This suit was heard in the Dublin Consistorial Court, 21st February 1863. It was instituted by the Committee of the Promovent, a lunatic, by order of the Lord Chancellor. It was a suit for nullity of marriage. The case made by the Promovent's pleading was as follows:—That Mrs. Watte had been originally a native of Cork, daughter of Richard Cody, a cooper by trade, and that she had gone from thence to London, where she was at first a servant of Mr. Abraham Watte, an artist; that afterwards, on the death of Watte's first wife, she became his wife; that they had issue, of whom one child survived; that Abraham Watte died, and by his will left to his wife, the Promovent, property amounting to about 18,000*l.*; that after his death there was litigation about his will, and this litigation, and the anxieties connected with it, operated on Promovent's mind, never strong, until after some time she became of weak mind; that in 1858 Mrs. Watte came to reside at Cork; at one time, with her brother, James Cody, and at another, in lodgings; that in 1859 she went from Cork to a place called Ballinacurra, not far from Cork, and was there induced by a Mrs. Holman (aunt of the alleged husband) to purchase a house; and after the purchase, the Holmans, and a sister of the alleged husband lived with her in this house; that a plan was formed by the persons then about her, to procure a marriage between Mrs. Watte and John O'Connell (the impugnant in the suit), then aged about 19 or 20 years, and who had returned from sea, where he had been serving on board a merchant ship; that on Friday 25th November John O'Connell came to the house where Mrs. Watte was residing, and drove out of it her brother, John Cody, beating him so violently that he had to remain in a house in which he took shelter several days. That on Saturday, 26th, Mrs. Watte was induced, by the arts of the persons about her, to go from her own house to the house of Michael Leahy, whose wife was a sister of Mrs. Holman, and also an aunt of John O'Connell, and who kept a public house, and remain there. That on Sunday, 27th, Michael Leahy induced the Rev. Mr. Fitzpatrick, the parish priest, to obtain a dispensation from the Roman Catholic Vicar General, and to celebrate a ceremony of marriage on that same day, in his house, between Mrs. Watte and John O'Connell. That no relation of Mrs. Watte and no servant of hers was present at this marriage; that soon after the marriage Mrs. Watte went to London, without her husband, and returned to Ireland again in April 1860; and in May, 1860, James Cody (her brother) presented a petition to the Court of Chancery for a writ *de lunatico inquirendo*, which was issued; and that, on trial of the inquisition, the jury found that Margaret Watte was of unsound mind, and had been so from the year 1857. To this suit John O'Connell made no defence. Several witnesses were examined to prove the weakness of mind of Mrs. Watte, and the facts connected with the marriage, and a sentence was pronounced declaring the marriage null and void. The only part of this evidence bearing on the Marriage Law is the account given by the Rev. Mr. Fitzpatrick of the performance of the ceremony, and the circumstances connected with it, and which is as follows:—"I know Margaret Watte since

27th day of November 1859: I depose that on
t day Michael Leahy called on me, and at his
quest I sent to the Roman Catholic Vicar-General
the diocese, for a dispensation, to enable me to
rm a ceremony of marriage between the said
rgaret Watte and John O'Connell in his, the said
chael Leahy's, public house at Ballinacurra, in the
nty of Cork: I depose, the said Michael Leahy
resented to me that it was necessary the said pro-
sed marriage should be so celebrated, in order to
nceal the marriage from a person named Cody,
relation of said Margaret Watte) who, he appre-
nded, would be troublesome, and give annoyance:
lepose that subsequently, on said 27th November,
tained by the hands of Michael Leahy, who went
same, a dispensation from the Roman Catholic
icar-General of my diocese, to marry said John
Connell and Margaret Watte, in the house of said
chael Leahy, and which said dispensation I threw
vay after the marriage, it not being the usage to
" preserve similar dispensations: I depose, that after
" obtaining same I, without previously confessing said
" Margaret Leahy, although it is recommended to
" Roman Catholics to make their confession before
" receiving or entering into the marriage state,
" although in all cases it is not required, I did cele-
" brate a ceremony of marriage between the said
" John O'Connell and Margaret Watte, according to
" the rites and ceremonies of the Roman Catholic
" Church, both being then of and professing the
" Roman Catholic religion: I depose that said cere-
" mony was performed in the house of said Michael
" Leahy, which was a public house, and in presence
" of said Michael Leahy and his wife, Maria
" Leahy, but without the presence of any relation of
" said Margaret Watte, and also without the presence
" of any servant of hers, in the Roman Catholic
" Church the presence of two witnesses being neces-
" sary for the validity of a marriage."

J.T. Ball, Esq., LL.D., Q.C.

30 June 1866.

Wednesday, 3rd April 1867.

PRESENT:

Right Hon. The Lord Chancellor.	The Right Hon. Mr. Justice O'Hagan.
Right Hon. The Lord Lyveden.	Sir Roundell Palmer, Q.C.
The Right Hon. William Monsell, M.P.	Travers Twiss, Esq., Q.C., D.C.L.

The Right Hon. THE LORD CHANCELLOR in the Chair.

The Right Hon. Edmund Hammond, called in and examined.

The Right Hon. E. Hammond.

3 April 1867.

654. (*The Lord Chancellor.*) You are Under retary of State for Foreign Affairs?——I am.

655. You have been kind enough to attend this mmission in order, I suppose, to give us some rmation upon the subject of our inquiry, but cially connected with marriages in foreign coun- s?——I presume so. That is the only point upon ch I can give you any information.

656. Will you be kind enough to tell us anything ch you think it important we should know on that ject?——Marriages of British subjects in foreign ntries, independently of those according to the *loci*, may be solemnized either under the Act, eo. 4. c. 91., *passed in* 1823, or under the Con- ar Marriage Act of 1849, 12 & 13 Vict. c. 68. The ner Act seems from its tenor to have been passed remove doubts and uncertainties as to whether riages in British embassy chapels were valid. ore the Act was passed, I apprehend that such riages were much on the same footing as "Fleet" riages in former times, without any law, and nothing but custom for their warrant. The applied not only to marriages in ambassadorial ses, but also to marriages performed within the tish lines, in a British factory, or in the house of British subject residing in the factory. The is entitled:—" An Act to relieve His Majesty's ubjects from all doubt concerning the validity of ertain marriages solemnized abroad." It recites, Whereas it is expedient to relieve the minds of all His Majesty's subjects from any doubt concerning he validity of all marriages solemnized by a inister of the Church of England, in the chapel r house of any British ambassador or minister esiding within the country to the Court of which e is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, as well " as from any possibility of doubts concerning the " validity of marriages solemnized within the British " lines, by any chaplain or officer or other person " officiating, under the orders of the commanding " officer of a British army, serving abroad; be it " enacted and declared, and it is hereby declared and " enacted by the King's most Excellent Majesty, by " and with the advice and consent of the Lords " spiritual and temporal and Commons in this present " Parliament assembled, and by the authority of the " same, that all such marriages as aforesaid shall be " deemed and held to be as valid in law as if the " same had been solemnized within His Majesty's " dominions with a due observance of all forms re- " quired by law." I consider that before the passing of this Act such marriages were solemnized without any legal warranty. I find an old circular of the 6th May 1816, desiring a record to be kept of all marriages celebrated in the houses of Her Majesty's ministers. After that a great deal of difficulty was found to exist in regard to the marriage of British subjects in foreign countries, and especially in South America, in parts of which it was utterly impossible for a Protestant to be married by the *lex loci*. Strong representations were made, and I think the Bishop of London interfered. To meet this difficulty the Consular Marriage Act, 12 & 13 Vict., was passed, which enabled marriages to be performed between British subjects, or when one party only was a British subject, in a British consulate. These marriages must be celebrated within the consulate in the consular office. They may be celebrated by the consul as a Registrar, or they may be solemnized in his presence, in the office, by a minister of the Church of England, or according to such other form or ceremony as the parties thereto may see fit to adopt. The Secretary of State issues a warrant under the Act of Parliament, authorizing the consul to perform

The Right Hon. E. Hammond.

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marriages, and if the consul should go away and his *locum tenens* is approved by the Secretary of State, his *locum tenens* can in his absence act for the consul in those matters. A question arose a short time back as to the legality of marriages between British subjects in a heathen land, but not performed in the presence of the consul, though there was a consul present in that heathen land, and we were advised that the land being heathen they could be performed there, by a minister of the Church of England, either on board ship or on shore, without going through the ceremony at the consulate. The question arose at Zanzibar. The Acts of Parliament and this little circumstance that I have cited, are, as far as I am aware, the only means of providing for British marriages in foreign countries, independently of the *lex loci*. Then there comes another question, and a rather difficult one, as to what is the extent of the validity of such marriages? As between British subjects there is no question that they are valid, being performed under the Act of Parliament, but when marriages are performed between a British subject and a subject of a foreign country, those marriages, I believe, are not necessarily valid out of the British dominion. Cases have occurred where a marriage has been challenged, in which one party was a French, a Belgian, or a Spanish subject, and the other English, and the validity of the marriage was questioned, the laws of the country in which the marriage was performed, not recognising such marriages. The embarrassment which such a state of things is calculated to produce, induced the Secretary of State to send a circular to all our ministers, which will now be extended to our consuls, desiring them specifically to warn parties, in all cases of a mixed marriage to be performed in a British embassy or in a consulate, that the marriage is only really and necessarily valid in England.

1657. (*Dr. Twiss.*) For British purposes?——For British purposes. This is a copy of the circular I refer to:—"Foreign Office, February 28th, 1867. "My attention has lately been called to the question "of the validity of marriages celebrated in the houses "of Her Majesty's diplomatic representatives in "foreign countries between subjects and foreigners, "and having consulted the proper law officer of the "Crown on this point, I have to instruct you in order "that Her Majesty's subjects may understand the "position in which they would stand under such "circumstances, to apprise them on all such occasions "that a marriage of this nature is not necessarily "valid without the dominions of Her Majesty." I apprehend we should in England recognize a marriage performed between a British subject and a Spanish woman, for instance, as valid for English purposes, and for all purposes of inheritance, but that marriage would not be recognized in Spain. The case I am alluding to occurred some time ago, when Lord Howden was there, and they actually seized a Spanish woman for presuming to marry and for living in marriage with an English person, the marriage having been performed at the British consulate at Barcelona.

1658. (*Lord Lyveden.*) Who seized her?——The Spanish authorities on behalf of the friends, and we could not dispute the matter.

1659. (*The Lord Chancellor.*) We can do no more than recognise the validity of those marriages in our own country. Of course we can have no effect whatever on foreign powers or on their law as to marriages being valid there?——Of course not the least. We have sent a great number of circulars at different times to our consuls—one is to this effect: that although marriages performed in our consulates might be legal marriages by the laws of the country, they would not be legal marriages if they were contrary to the statute law of England.

1660. The practical question is this, whether there is anything in respect to the marriages of British subjects abroad which requires either explanation or correction, and which is within our power?——I think, if it could be managed with security, you might relieve British subjects from a considerable hardship to which they are now subject, and also think you might prevent what may be a very injurious use of the Act of Parliament as to ambassadorial marriages. At present there is nothing in the Act of Parliament of 1823 in regard to ambassadorial marriages to afford any warranty that the parties have a right to be married at all. There is no legal impediment to two people going to a British embassy and being married there, without questions being asked or without any assurance that they can lawfully contract a marriage. By custom our ambassadors do, I believe in most cases, make the parties take an oath that there is no legal impediment to their marriage, but it is not obligatory upon the ambassadors to do so, and though I say I believe by custom they do it generally, I only know for certain that it is done at Paris. I have here the forms which I got from the embassy at Paris; it is merely a declaration on oath that there is no legal impediment. Now I think it would be a very great thing to have something similar, though not the same, to what we have as regards consular marriages. The Consular Act as to marriages says that residence of both parties for a month within the consular district when the marriage is to be performed is necessary before they can apply for a licence or be married without one. If they apply for a licence the marriage may be celebrated seven days after the expiration of the month; if without 21 days after.

1661. I suppose when a marriage is performed at the ambassador's house or chapel the ceremony is according to the rites of the Church of England——It must be so by the Act of Parliament.

1662. What do the Presbyterians or other dissenters do if they want to be married in Paris?——I cannot answer that question.

1663. (*Dr. Twiss.*) I think you overlooked or did not fully state to us the purport of the Consular Marriage Act, which allows the ministers of any religion to perform any service they please?——Yes. When I say that it may be a civil contract of marriage of course it implies that anybody may perform it.

1664. They may have any religious service they please?——Yes; or they may have no religious service at all.

1665. So that a Presbyterian may be married according to his own service, before the consul?——Yes; or with no service at all.

1666. But if he chooses to have his own service performed the Act provides for it?——Yes; I was going to say that I think that one condition of the Consular Act bears rather hardly in some cases, and think it might be mitigated, adopting the same principle that we adopt in this country as to marriages by banns or by licence. I think it would be quite sufficient if one party alone were required to be resident for a certain time in the district where the marriage is to be performed, while the other party might bring a certificate to the consul that the banns had been published either in another consulate or in England if the like, in the same manner as is done in England. A man is married in London to a woman whose banns have been published in Yorkshire. I think such a provision would afford great relief. I saw a letter the other day from one of our consuls in China which put the matter very strongly. He said very great inconvenience is felt from the present regulation as to residence, because it very often happens that a young lady having previously made an engagement in England to be married to a person who has returned to China before the marriage was celebrated, has come out to China to be married, and she is put in an awkward situation, having to reside in China five or seven weeks before the marriage can be celebrated, the lady having no natural protector, and perhaps friends in the place. That objection, I think, might be got over in some such way as I have [illegible]. In like manner, with respect to marriages in Paris,

…s it would be a very fair condition that one of …ould reside in the locality, in the same …mmon, a certain number of days before the … place, for there is nothing, as far as I … any two people starting from London … mail to-night, making their declaration to-…ow, and being married the next morning at the …ssy chapel. This, of course, gives very great …ity for clandestine marriages. I think something …t be done to guard against clandestine marriages, …that I know of any that have taken place, and … to relieve persons wishing to be married abroad … the necessity of a double residence, such as they …ow subject to.

…67. Your suggestion, I think, is that the resi…e of one party only would be sufficient?——Quite …ient, I think. Notice of marriage being given in …dinary residence of the other party.

…68. Allow me to bring another subject to your …tion. In the embassies, I believe, the practice …is not to marry a British subject to a native of …ountry unless the forms, viz., of notice and so on, … been complied with on behalf of the native of …ountry?——Of course the native of the country … make the ordinary deposition to which I have …red, but that does not necessarily go to the extent … legal bearing of the foreign law on the mar…s proposed to be celebrated. It is to provide … security in this respect that the circular which …erred to just now has been sent to our embassies …ing that parties should be warned that the mar… performed in the embassies will not necessarily …od except in England.

…69. I am speaking of the embassies?——Yes; … relates to the embassies. It does not relate to …consuls but we are going to send the same in…tions to the consuls. We were under the im…sion that they had a general instruction already …hat effect, but it turns out it was only given …me special cases in which a question has been …

…70. I was informed at the embassy at Dresden … if a lady about to be married were a native …e country they would not marry her unless there … been the due proclamation or the due notice that …ew requires?——It is entirely optional with the …ster what condition he chooses to affix to al…ng a marriage to be solemnized in his house; he … not bound to ask any questions or to give any …ing until that circular was sent the other day. … minister might exercise his own discretion …at respect. I have put in what is required …aris but we do not necessarily know what is re…d at other embassies. The circular is intended …vide a security against the state of things I … described, viz., a marriage being performed, and … parties being in ignorance of the peril to which … were exposed. We had a case of a Swiss … as a British subject who insisted upon …g married at Paris to an English woman. We …ord Cowley that he might allow the marriage …e solemnized there if the person still desired it, … care that the bride was previously informed … the other party was legally a Swiss citizen as well … naturalized British subject, and that the legal … of the marriage might be open to doubt in …nd, France, or elsewhere, and recommending … marriage should previously take place by civil …

…671. (*Sir R. Palmer.*) Which was Swiss, the lady …e gentleman?——The gentleman.

…672. Has it ever been considered whether our law …t to be applied to men, whose domicile would rule … domicile of the marriage, who are not British sub…s?——The Consular Marriage Act merely says … one of the parties shall be a British subject.

…673. Because, you see, the effect of that might … that the lady was not married at all, and if the … was not subject by virtue of his allegiance to the …glish law, and was not locally subject to it, how would the marriage upon general principles have been good?——The Act does not provide for that case.

1674. (*Dr. Twiss.*) The expression of the Consular Act is, "both or either of the parties being the "subject of the realm"?——Yes; according to the terms of the Act of 1823 I am not quite sure that both parties might not be foreigners. It is entitled, "An "Act to relieve His Majesty's subjects from all "doubt," but it does not in the enacting part refer to the parties being married as British subjects alone, or one or other of them. It is rather a curious omission; of course one understands what it means.

1675. (*The Lord Chancellor.*) Does not that Act relate to British subjects?——There is no restriction to British subjects in that Act, but there is such a restriction, at least as regards one party, in the Consular Marriage Act.

1676. The recital is: "Whereas, it is expedient to "relieve the minds of all His Majesty's subjects from "any doubt," and so on?——Yes.

1677. (*Sir R. Palmer.*) That is only an Act confirming marriages which had previously taken place?——It is an Act which applies to marriages in British embassies now.

1678. (*The Lord Chancellor.*) The words are, "as if the same had been solemnized." It is very badly expressed, but it certainly seems to refer only to former marriages?——That is the Act under which they perform marriages, and it is recited in the Consular Marriage Act.

1679. (*Sir R. Palmer.*) I see in the second clause there is a word of futurity?——Yes; as regards the objection taken by the Lord Chancellor, that they must be British subjects, I conceive that the progeny of such a marriage, even supposing the parents were not British subjects, would, in England, inherit from their parents as born in lawful wedlock.

1680. Has a case ever arisen within your knowledge of practical mischief, which has arisen out of this legislation? Has the case ever happened of a person repudiating such a marriage as not being valid by the law of his own country?——We have had a case brought before us of an Englishwoman who married a Frenchman in this country, but the French authorities will not recognise the marriage. I have alluded to a very strong case which occurred in Spain in the year 1850. The Spanish authorities in Catalonia threatened to force away the wife, who was Spanish, from the English husband, whom she had married in Spain. The Queen's advocate of that day would not take upon himself to say, that the marriage of a Spanish subject in a British consulate should be deemed valid if contrary to Spanish law. The Spanish law must prevail, and regulate the status of the parties, so long as they reside in Spain without contracting a marriage in a mode recognized and sanctioned by Spanish law.

1681. In that case the Spanish subject was the lady?——Yes. Then there was a case of an Englishman and a Frenchwoman, but there the marriage was not legally performed, even by British law.

1682. (*The Lord Chancellor.*) Where were they married?——In Spain. The Queen's advocate was of opinion that the marriage was not legally valid unless it was recognized as such by the law of Spain, which was very improbable. Very soon after the Consular Act was passed one of our consuls in Belgium reported that "No marriage is legally valid in Belgium "as regards Belgian subjects, or the reversion of "property vested in Belgium, unless it has been "solemnized in every respect in conformity with the "Belgian regulations under the Code Napoleon."

1683. (*Dr. Twiss.*) Do you think there would be any objection to allowing the consul to attend at the place of worship or wherever the service was, which was to be performed? At present the service must be performed in the consulate?——As a general rule, the consulate is the place in which, under ordinary circumstances, consular duties should be performed; and I think it is better to maintain the rule as regards

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marriages, otherwise facilities might exist for clandestine marriages.

1684. How would it be in the case of Roman Catholics?——I apprehend that in France any religious ceremony may be resorted to so long as there is in addition to it a civil contract before the civil magistrate. I see no reason why British subjects should not go before the consul and enter into a civil contract and then go through whatever ceremony they like elsewhere. I never could understand the objection, which I know has been very much pressed, to parties going through the two ceremonies; one does not vitiate or desecrate the other.

1685. (*Sir R. Palmer.*) How is the law with respect to places where there are no consuls?——They must go to the nearest consular district, and reside within it for the statutable time; unless, indeed, they repair to an embassy at the place where it is established.

1686. So that, in fact, at present there is no power, by law, for English subjects to be married abroad generally—there may be in some places—except where there is a consular establishment?——Except at a British mission, or by the *lex loci*. Unquestionably, I should say the performance of a marriage in a foreign country in the house of the ambassador, or in a British consulate, is a great security for its regularity and validity.

1687. (*Dr. Twiss.*) This act is valuable, not merely for the solemnization of the marriage, but for the evidence of registration?——It has that effect, but the primary object of the Consular Marriage Act was to enable British subjects living in foreign countries where they could not be married, to contract marriage in a manner which would have legal effect in England.

1688. The consular register becomes evidence here?——The consul is obliged by his instructions to send home every year copies of the register of marriages.

1689. And it becomes evidence here?——I presume so.

1690. (*The Lord Chancellor.*) Does that register remain in the Foreign Office?——No; it is sent at once on its being received to the registrar-general. With respect to marriages in embassies, certificates thereof are sent officially to the Foreign Office, and then they go to the Bishop of London's registry. I do not understand the necessity for this difference. The Bishop of London's registrar gets a guinea for each certificate sent to him; but there is no fee for copies of registry sent to the registrar-general. I believe the registrar-general, as a general rule, objects to receive certificates of ambassadorial marriages. I should think it much better that the certificate of every marriage, whether performed in a consulate or in an embassy should go to the registrar-general, where it would naturally be sought for at a future time.

1691. (*Dr. Twiss.*) Those ambassadors' registers are not legal evidence strictly speaking?——They are sent to the Bishop of London's registry.

1692. They are sent to the Bishop of London under an arrangement made in the time of Lord Liverpool?——There was an instruction in 1816 to send them to the London registry office.

1693. (*Lord Lyveden.*) Is there any legislative enactment which you would suggest to improve the law of marriage as to Englishmen abroad?——Only what I said just now as to modifying the law about residence, putting it more on the footing of the English law; and then, if I did that, I am very much disposed to say, that a similar rule to that which may be applied to consular marriages as regards residence should be applied to diplomatic marriages, namely, that there should be a certain amount of residence at the place where the embassy is situate. I think some greater security than now exists should be taken against the embassy being made available for a clandestine marriage. Parties seeking a clandestine marriage might probably not be over-scrupulous in making a declaration that there was no impediment to it.

1694. (*Dr. Twiss.*) I will put a case, which g a great deal of dissatisfaction to the clergy and Bishop of London. At Riga, and one or two Rus ports, the Russian law allows marriages to be g which are celebrated in the English churches. Th are certain churches where they have ministers chaplains, and by the *lex loci* they are good marriag but the register books of those churches are not dence in this country, consequently they were tremely anxious that the consul should attend register the marriage, and then they would get advantage of the registration?——In the case at R as also in a similar one at Oporto, the English ch lains, I believe, opposed the celebration of Bri marriages, except in the British chapels. Bu really think the objection to going through the c contract before the consul is so very needless t it is not worth while altering the Act for that. might be just as well not to go out of the way afford greater facilities to marriages abroad than extended to marriages in England.

1695. With regard to this point which we are spe ing of, assuming that British subjects in a fore country have no means of marrying except by me of a minister of the Church of England reading service, would they carry the common law of Engl with them in that respect, and would that be a g marriage?——They would carry it into a heat land, but I conclude only into a heathen land.

1696. Assuming that the man was an Englishm the law of his domicile of course might make i good marriage; if the common law of England w with him it would be a good marriage?——The qu tion was raised the other day and an objection made as to marriages in a heathen land. We w informed, however, that such a marriage was g even though it was not celebrated in the cons office. I took the liberty of referring to the Act, I was informed, that although it might be safe tha marriage should be performed in the consular offic far as this country was concerned, still a marri celebrated by an ordained priest in a heathen l would, on Lord Stowell's authority, be valid. A understand the case, a minister of the Churc England has no right derivable from British law perform a marriage in a Christian country except an embassy or in a consular office, unless the *lex* recognises marriages performed by him elsewh But if the *lex loci* recognizes marriages perfor anywhere by a minister of the Church of Engl such marriages would be deemed valid in England

1,697. There is no provision in this Act of Par ment for a marriage solemnized on board a Bri vessel of commerce, only on board a British vesse war?——No.

1,698. Do you know as a matter of fact, whethe often happens that parties are married when they to India or elsewhere on board these vessels? T enter a record in the log very often, and it is sen the Bishop of London's office?——I am not awar it. But I should think it might give rise to quest The ship itself would, I presume, be held to be E lish soil; but if so, how could a legal marriage performed on board if not performed according to law of England; unless indeed it were held that ship being on the high seas was quasi in heat waters, and that on such ground the ordinary law marriage did not apply. But even then, I presu the marriage must be performed by an ordained pr

1699. There might be hardship in the case vessel going out?——Yes; there is this distinc between a ship of war and a merchant ship, th ship of war carries its extra-territoriality into w ever water it lies in, and a merchant ship does no

1700. It was not an unusual thing I believe people to come on board a British man-of-war foreign port and be married there?——I have think, heard of such a thing.

1701. (*Sir R. Palmer.*) I understand you to say at you are not aware of any practical inconvenience ich arises from allowing the solemnization of a riage with a foreign subject?——As far as this ntry is concerned there is no inconvenience; but far as the foreign country is concerned we cannot quire it to respect our marriage.

1702. Would not it be a great practical incon-nience if British subjects were entrapped in that y into a marriage which was repudiated in the reign country where they lived?——Certainly. til the other day there was an impression in the reign Office that there was a general consular in-uction to the same effect as the general instruction, ich is now gone out to our ambassadors, but it does t appear to be so, so we are going to send instruc-ns out immediately to warn every party that a nsular marriage is only necessarily valid except in gland.

1703. It occurred to me at first that the difficulty ght apply only to the man, but I think it might ply either way, because the lady does not change domicile?——I am afraid no legislation of ours uld avail. All that we can do is to take the pre-tion of warning parties as to the limited effect of a rriage so solemnized.

1704. Would there be any great practical incon-nience if the law were limited to cases where ey were both British subjects?——I think that uld be an unnecessary restriction. If the law the country recognizes such mixed marriages re can be no reason for interfering with them It ems to me enough that both parties be warned of e consequences of not acting in conformity with law of the country bearing on mixed marriages. lo not think I would restrict consular or ambassa-rial marriages merely to British subjects.

1705. Have you considered this, that if the law of country allows them to marry, then you do not eat an English Act of Parliament for it, and there-e it is only in a case in which they do not marry cording to the law of the country that the inter-tion of this Act is really wanted?——That is very ssible, but I apprehend that the law of foreign untries in some respects is more stringent than our m in the case of marriage. According to the law the country, in some cases parties would be obliged establish various points previously to their con-acting marriage, which parties in this country are t required to prove, but which English parties cking to be married abroad according to the *lex ci* must needs prove. I believe that much stress laid in foreign countries on the production of evi-nce, prior to marriage, as to age, consent of parents, cality, residence, confirmation, and various matters that kind, which, in the case of British subjects eking to be married abroad, might be felt as a rievance, and even operate as an impediment to a arriage which would be held unobjectionable in Eng-nd. Moreover, the subsequent registration required the Act, of a consular marriage is necessarily very dvantageous, as providing readier means of proving ch a marriage than might be obtained after a lapse time, in regard to a marriage performed according the *lex loci*.

1706. I presume that in every European and hristian country it would be held that if they were oth British subjects a marriage under the Consular Marriage Act would be good? it would be held by the *x loci* to be good?——I imagine such marriages ould not be called in question in a foreign country; ie fact of the parties being reputed man and wife ould, I think, be quite sufficient, without inquiry as how they became so; but I cannot tell you how the w of any foreign country would bear upon that point.

1707. (*Dr. Twiss.*) If the party had a British omicile, it would be the law of the domicile of course?——I should apprehend there would be no question, nd I think if a question were raised we might fairly complain of it, inasmuch as the validity of a marriage between two British subjects is a question only to be determined by British law, and if so recognized should not be called in question in a foreign country.

1708. One object of the provision allowing marriage where one of the parties only was a British subject, was probably to enable parties who had been married in the country also to be married before the consul, and then of course to have evidence of the marriage in England? It is of great importance no doubt to be able to prove a marriage here by referring to a British register, instead of sending out to the foreign country for a book which would not be evidence in this country?——That is doubtless one result. But I apprehend the main object was to facilitate the marriages of British subjects who, though they have not lost the character of British subjects, have, by long residence in a foreign country, formed local connections, and desire to intermarry with natives or other than British subjects. As to Roman Catholics, their marriages I conclude for spiritual purposes, must be performed before the church, although for civil purposes the State would be satisfied with a civil contract of marriage; but the church would require something more, and it would refuse sacraments to a person who was not married in church. I presume that is so, but I do not know how that is.

1709. (*Mr. Justice O'Hagan.*) You would require the presence of the clergyman under the rule of the Council of Trent, in order to validate the marriage, would you not?——In France I believe the civil contract marriage is insisted upon irrespective of any religious ceremony.

1710. Otherwise it would be clandestine and invalid?——In the estimation of the church the presence of a clergyman may be indispensable, but perhaps not in that of the State.

1711. (*Mr. Macqueen.*) I understand, but I cannot vouch for it as a fact, that when a Russian lady and gentleman are married in London, in whatever form the marriage takes place, the precaution is taken of getting the registrar to be present; the English registrar attends and records the marriage?——I do not know. I was not aware that a registrar attending out of his office would validate a marriage.

1712. (*Sir R. Palmer.*) At present, no English marriage depends on registration, if the marriage is solemnized according to the law in other respects?——A Russian was, I believe, married in this country a little while ago, and I should think, probably, he was married in Welbeck-street.

1713. (*Mr. Macqueen.*) That is not the Russian ambassador's chapel?——Yes, it is.

1714. It is not in the embassy?——But it is the Russian chapel; it is the chapel of the Russian government. It is part and parcel of the embassy, and I should consider that if there was any question raised about it we should respect it as part of the Russian embassy. It is a Russian chapel; in fact, the Registrar General assumed in 1865 that this chapel ought to be registered for marriages. The ambassador complained, and the Registrar General, on a communication from the Home Office, stated that he was ignorant of the house being considered part of the embassy, and expressed his regret at having troubled the chaplain on the subject. Formerly various foreign missions had chapels; I do not know how the case is now.

1715. This is certain, that no marriage ever took place in the French ambassador's chapel, or in any of the French consul's offices?——There is no difficulty in that respect, because there are plenty of Roman Catholic chapels in which French Roman Catholics can be married. I do not know whether we consider the French chapel as being part of the French embassy; I think not.

1716. The Prussian secretary said to me that these ambassadorial marriages had the countenance of the

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law of England, but there were no such things known on the continent as ambassadorial marriages. Strangers who come to England comply with the *lex loci*?——The *lex loci* in England is much more liberal than it is abroad in regard to marriages.

1717. (*Dr. Twiss.*) Every religious denomination can have its own religious marriage in this country?——Yes. In parts of South America it would be absolutely impossible for Protestant British subjects to be married if it were not for the Consular Marriage Act.

1718. In regard to the civil marriage it may take place in any registered building if the registrar himself is present, or it may take place at the registrar's office?——I was not before aware that the registrar might attend out of his office for such a purpose.

1719. So the registrar could attend?——Clearly so, as the law allows him to do so.

1720. (*Sir R. Palmer.*) Several Acts of Parliament have been passed; one I see is before Parliament at the present moment, called the Odessa Marriages Bill, to legalize foreign marriages which the consular acts do not legalise. What are the circumstances connected with those acts?——Those acts have, I believe, always been merely remedial, to correct irregularities inconsistent with the law.

1721. There have been other acts?——That has always been the principle of such acts, as far as I remember.

1722. (*The Lord Chancellor.*) The Odessa Marriage Bill refers to marriages invalidated by reason of the "inattention of the consul"?——Yes. There has never been any act to alter the Consular Marriage Act, as it was passed in 1849. The acts referred to have only been passed to meet specific cases where the provisions of the Consular Act have inadvertently been disregarded.

1723. (*Dr. Twiss.*) Is there any difficulty found with respect to British subjects resident in China at present?——I instanced the difficulty resulting from the provision in regard to residence in the case of a woman going out to be married in China. The consul at Shanghai has represented the difficulty, and it appears to me well founded. Much more notice is required for consular marriages abroad than for marriages in England. Here it is three weeks' residence in the parish, but practically 10 days.

1724. (*The Lord Chancellor.*) 15 days?——Yes, and that of only one of the parties. With respect to marriages of British subjects to be celebrated abroad, I think provision might be made for the publication of banns, or for some other formal notice in this country, so as to preclude the necessity of both parties previously residing at the foreign place where the marriage is intended to be performed; I think it would be very desirable to do that.

1725. (*Dr. Twiss.*) A man might take out a licence, or a certificate of banns for this country?——Yes, and then let the woman residing abroad also take out a licence at her place of residence. Neither our embassies nor consulates can exercise any real control. At Paris, I believe, parties merely ask leave to be married in the embassy, which is granted if they make the usual declaration.

1726. No inconvenience I think has been found from the marriages in the embassies?——I have never heard of any. You would know much more in the courts than we should know. Of course parties unduly married would take good care never voluntarily to let us know.

1727. Is it a matter of fact that there would be a consul in all the former capitals of Germany where there was an embassy?——No, certainly not.

1728. At Hanover, for instance, would there be a consul or a vice-consul?——No, nor at Dresden either. We have one at Frankfort in consequence of its importance as a place of trade. I presume he has a marriage warrant; but probably there would be no difficulty there in regard to the performance of marriages according to the *lex loci*. But we do not consider ourselves bound to keep consuls at places in order to marry English people.

1729. What I am looking forward to is providing for the marriage of British subjects abroad. Here is an Act which as to embassies gave considerable facilities for the marriage of British subjects. It so happens that a large portion of the continent no longer has an ambassador's chapel?——Hanover now belongs to Prussia, so parties would go either to the embassy at Berlin or to the nearest British consulate in Prussia. With respect to Saxony there is a consul at Leipsic to whom they may go.

1730. (*Sir R. Palmer.*) You do not think there would be any great inconvenience in always requiring people to go to the nearest consul?——You cannot bring a consul to the door of parties desiring to be married. Parties at Breslau, for instance, would go, I suppose, to Stettin or Koenigsberg. We could not put a consul at Breslau merely for the purpose of marrying people. If the district of any consul comprised Breslau, and I cannot say offhand whether it does, there would be no need for the residence of the parties at the place where the consul resides; but otherwise they would have to go and reside within the district of the consulate.

1731. That assumes that the only good way of solemnizing marriage is before the consul. What was occurring to me was whether you saw any objection to giving greater facilities to solemnize marriage at places where people might be residing if there were no consul there?——I should certainly think it would be objectionable to give an indiscriminate power to British clergymen abroad to marry.

1732. Would there be any objection to giving to this extent, that in those places where there are settled English congregations, under the Bishop of London for example, they should have authority to marry and be under the obligation of keeping registers and returning them?——I think such a system would be objectionable. Such clergymen might be spiritually under the control of the Bishop of London but the State would have no control over them; and in some countries the law will not admit of excluding clergymen from officiating unless with the Bishop's licence. I conceive also that there might be some difficulty in establishing at a future time that a clergyman who had performed a marriage abroad was really licensed by the Bishop so as to validate his acts.

1733. The Bishop of Gibraltar in the shores of the Mediterranean has been substituted as far as letters patent can do it for the Bishop of London has he not?——Within certain limits the Bishop of Gibraltar has the power of acting. He has no power of action at Rome.

1734. (*Dr. Twiss.*) Not, I think, under letters patent, but under letters from the Foreign Office. The patent of the Bishop of Gibraltar, I think, confines him to Malta and Gibraltar?——I think the patent goes to lands watered by the Mediterranean.

1735. (*Sir R. Palmer.*) I think I recollect precisely accurately how it stands. The see or diocese is limited to Gibraltar and Malta, but authority over those congregations round the shores of the Mediterranean is also given?——I think there is. He has no authority at Rome at all. We had a case some little time ago at Rome, where the late bishop wished to interfere with the British community, and they resisted. An appeal was taken to the Archbishop of Canterbury, who decided against the bishop.

1736. There would be no coercive power anywhere?——No.

1737. (*Dr. Twiss.*) Is it not the fact in regard to those places where there is what is called a fixed well-paid chaplain under the Bishop of London, that there is some communication with the Foreign Office before he is appointed?——The only chaplains we recognize in the Foreign Office are those whom we appoint to certain embassies, and those whom

point under the Consular Act, the community and e Government contributing severally a portion to e maintenance of the latter.

1738. Then in point of fact you do not recognize chaplains excepting where there are ministers or suls ?——No, we have no control over them. We not recognize them. They are not public servants. such a chaplain behaved ill, the only resource we ould have would be to tell the Government of the untry that we should not remonstrate if they shut s chapel up.

1739. (*Sir R. Palmer.*) Will you let me ask you a estion as to the practice in the kingdom of Italy aring on the point as to whether we should allow r consuls to marry foreigners in foreign countries ? not there a rule established in the kingdom of Italy, at if any British subjects desire to be married there, ey must obtain some kind of certificate from the nsul, that as far as he knows there is no impediment British law to the marriage ?——Yes ; I have put the circular which we have sent. We had a good al of discussion with the Italian Government as to terms in which that circular should be worded, d at last we settled it.

1740. They go on the principle that it is not right r them to marry British subjects in Italy contrary to itish law; is not that it ?——I do not know ether that is quite the principle on which they act ; t this did not apply to marriages in a consular apel.

1741. I quite understand it has nothing to do with at ; the marriage is by the *lex loci* ?——Yes.

1742. They pay so much respect to our law, that they will not marry British subjects knowing them to be such without some kind of evidence that it is consistent with our law ?——That is so.

1743. (*The Lord Chancellor.*) Is there any further information which you wish to impart to us or which you think the Commission would desire to obtain ? ——If the Commission wish to know exactly what the law of foreign countries is with regard to these marriages, and if they will put on paper the exact points they wish to ascertain, and will apply to Lord Stanley, he would doubtless endeavour to obtain it from our ministers abroad, though I am not sure that for the purpose of your inquiry any information as to the laws of foreign countries would assist you much. The object is to facilitate English marriages, and to secure that they shall be legal. We could, if the Commission wished it, ask the foreign powers "how "far would you recognize a marriage performed "according to the English law within your terri- "tory ?" but the danger of asking such questions is, that you may get an inconvenient answer.

1744. (*Sir R. Palmer.*) I think there cannot be much doubt as to what answer we should get generally. It would be, if British subjects they would recognize the British law, and if either of them were not British they would not do so ?—If we got that answer we ought to be satisfied, but I am afraid we might in some cases get a rather more extended answer, namely, that they would not recognize the marriage at all, and that might be a source of embarrassment hereafter with regard to the succession of property or inheritance. I think, on the whole, it would be safer not to ask any questions.

Adjourned.

MEMORANDUM of DOCUMENTS put in evidence by the Right Honourable EDMUND HAMMOND, before the MARRIAGE LAWS COMMISSIONERS, on the 3rd April 1867.

1. Form used on application to be married at the itish Embassy at Paris.

2. Form of affidavit made by parties desirous of being rried at the British Embassy at Paris.

3. Form of circular forwarded to British consuls on the ssing of the Marriages in Foreign Countries Facilitating (12 & 13 Vict. c. 68).

4. Form of notice of marriage as required under section 2 the Statute.

5. Form of register of marriage notices required to be kept section 3.

6. Form of oath, affirmation or declaration, which is be made by parties praying for a licence under sec- n 4.

7. Form in which a caveat against a marriage is to be e under section 7.

8. Form according to which the register books are to be by consuls under section 11.

9. Form according to which each consul is to send to one Her Majesty's principal Secretaries of State "a true copy of every entry of marriage in such register book, duly certified under hand and seal," required by sec- n 12.

10. Form according to which consuls are to send home certificate that no marriage has taken place within the year, required by section 12.

11. List of questions which by section 14, consuls may to parties wishing to be married.

12. The Registration Act of the 6 & 7 Will. 4. c. 86, to in section 18 of the said Statute.*

13. The Act 6 & 7 Will. 4. c. 85, pointing out, section the duties which devolve upon consuls as registrars of rriages.*

14. The Registration and Marriage Amendment Act, of 1 Vict. c. 22.*

15. The Marriages in Foreign Countries Facilitating Act (12 & 13 Vict. c. 68).*

16. Warrant authorizing the solemnization and registration of marriages under the provisions of and in the form and manner prescribed in, the Foreign Marriages Facilitating Act.

17. Form of circular to British consuls transmitting a warrant for the solemnization of marriage under the said Statute.

18. Circular from the Foreign Office addressed to British consuls, dated the 20th August 1853, and containing general directions as to marriages under the "Marriages in Foreign "Countries Facilitating Act."

19. Circular from the Foreign Office addressed to Her Majesty's diplomatic and consular servants abroad, dated 1 July 1857 calling attention to the fact that marriages void in the United Kingdom are not rendered valid by being performed under the 4 Geo. 4. c. 91. or 12 & 13 Vict. c. 68. in countries where they are not prohibited by the *lex loci*.

20. Circular from the Foreign Office addressed to British consuls in the Italian dominions, dated 26th September 1866, and having reference to the 103rd Article of the new Italian Civil Code.

21. Circular addressed by the Foreign Office to Her Majesty's diplomatic representatives in foreign countries, dated 28th February 1867, and having reference to marriages celebrated in the houses of Her Majesty's diplomatic representatives in foreign countries, between British subjects and foreigners.

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* It has not been thought necessary to print this Act in the Appendix to Mr. Hammond's evidence.

The Right Hon. E. Hammond.

3 April 1867.

wish to be married at the Embassy, on

at o'clock.

Paris, 18 .

Signed by the chaplain of H.M.'s Embassy.

The above-named parties may be married on taking previously the usual oath before one of the Secretaries of Her Majesty's Embassy.

Paris, 18 .

Signed by H.M.'s Ambassador, Minister, or Chargé d'Affaires.

We the undersigned of the Parish of in the county of now residing at and of the parish of in the county of now residing at do severally make oath, that we are about to enter into the holy estate of matrimony. I the said with the said and I the said with the said that of the full age of twenty-one years that we know of no lawful cause or impediment to such marriage by reason of consanguinity, affinity, or previous contract of marriage, or otherwise howsoever: and it is proposed to solemnize the said intended marriage as British subjects, in the chapel, or house so considered, of Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary at Paris, according to the rites of the Church of England.

Sworn before me Her Britannic Majesty's Secretary of Embassy, at Paris, this day of in the year of our Lord One thousand eight hundred and fifty.

In the presence of

SIR, Foreign Office,

I transmit to you a printed copy of the Act 12 & 1 Victoria, cap. 68, entitled "An Act for facilitating the ma "riages of British subjects resident in foreign countries; and I have to signify to you the Queen's commands th you will take care that the provisions of this Act of Parlia ment shall be strictly complied with, so far as you may b called upon to carry them into effect.

With this view I transmit to you printed copies of th several forms which Her Majesty's consuls are required t make use of in the discharge of those duties, and whic have been prepared and sanctioned by the Registrar-Genera as provided in section 11 of the Act.

First.—A form of notice of marriage as required und section 2.

Secondly.—A form of register of marriage notices require to be kept by section 3.

Thirdly.—A form of oath, affirmation, or declaratio which is to be made by parties praying for a licence und section 4.

Fourthly.—A form in which a caveat against a marriag is to be made under section 7.

Fifthly.—A form according to which the register book are to be kept by consuls, under section 11 of the Act.

Sixthly.—A form according to which each consul is send to one of Her Majesty's principal Secretaries of Sta "A true copy of every entry of marriage in such regist "book, duly certified under hand and seal," as required b section 12.

Seventhly.—A form according to which consuls are send home the certificate that no marriage has taken pla within the past year. This form is also required by secti 12.

Eighthly.—A list of questions which, by section 1 consuls may put to parties wishing to be married.

Ninthly.—A copy of the Registration Act of the 6th an 7th of William 4, cap. 86, referred to in section 18, togeth with a copy of the Act 6 & 7 William 4, cap. 85, whi points out, in section 23, the duties which will devolve upo you as a registrar of marriages; and a copy of the Regi tration and Marriage Amendment Act of 1 Vict., cap. 22

And lastly.—I enclose a warrant under my hand, authorize you to solemnize and register marriages under th provisions of this Act of Parliament, in the form an manner prescribed in the said Act.

I am, Sir,

Your most obedient

Humble servant,

NOTICE OF MARRIAGE.

B.

[Pursuant to Act 12 & 13 Vict. c. 68. s. 2.]

To the British Consul at .

I hereby give you Notice, that a Marriage is intended to be had, within Three Calendar Months fro the Date hereof between me and the other Party herein named and described; (that is to say),

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.

Witness my hand, this day of 18 .

I, British Consul at certify that Licence has been this granted by me for the Solemnization of the Marriage in respect of which the above Notice was give

(Signed)

Dated

N.B.—This Certificate and Licence will be void unless the Marriage of the Parties named in the above Notice be solemnized on or before the day of 18 .

C.

The Right Hon. E. Hammond.

3 April 1867.

Extract from 12 & 13 VICTORIA, Cap. 68., Sect. 4.

"Any Person authorized in that behalf may, at any time before the solemnization of any intended Marriage, forbid the solemnization of such intended Marriage by writing the word 'Forbidden' opposite to the entry of the Notice of such intended Marriage in the Register, and by subscribing thereto his or her Name, and Place of Abode, and his or her character, in relation to either of the Parties, by reason of which he or she is so authorized; and in case the solemnization of any such intended Marriage shall be so forbidden, the Notice shall be void, and such intended Marriage shall not be solemnized under such Notice."

NOTICES OF MARRIAGE.

To the British Consul _____ *at* _____

I HEREBY GIVE YOU NOTICE, that a Marriage is intended to be had, within Three Calendar Months from the date hereof, between me and the other Party herein named and described; (that is to say),

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.

Witness my hand, this _____ day of _____ 18 _____

To the British Consul _____ *at* _____

I HEREBY GIVE YOU NOTICE, that a Marriage is intended to be had, within Three Calendar Months from the date hereof, between me and the other Party herein named and described; (that is to say),

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.

Witness my hand, this _____ day of _____ 18 _____

D.

British Consulate

at 18 .

APPEARED PERSONALLY

of

and

of

and prayed a Licence for the Solemnization of Matrimony in the

between them the said

and

And they severally for himself and herself { made Oath solemnly Affirmed Declared } that they believe that there is not any Impediment or Kindred of Alliance, or other lawful Hindrance to the said Marriage; and that both of them the said

and

have for the space of one Calendar Month, now last past, had their usual respective Places of Abode, within the District of

And that the consent of the Person or Persons whose consent to the said Marriage of the said

is required by Law (he being not a Widow and being under the age of 21 years) has been obtained thereto or that there is no Person having Authority to give Consent to the said Marriage of the said

who is not a Widow and is under the age of 21 years.]

Sworn
Solemnly affirmed
Declared
} before me,

Consul

E.

DIRECTIONS.

CAVEAT.

To Her Britannic Majesty's Consul,
residing at

TAKE NOTICE that the Marriage intended to be had between[a]

of

and

of

ought not to take place

because

and that, for the reasons aforesaid, this Caveat against such Marriage is entered by[b]

of

this day of 18

[a] Insert here at full length the names and surnames, and residence of the parties intending Marriage.

[b] Insert here at full length the name and surname, residence and profession or calling of the person entering the Caveat, and also the date of the entry thereof.

N.B. If the Caveat be signed by one person *on behalf* of another, then, immediately before the asterisk add the following words,—"and on his [or her as the case may be] behalf duly signed by

of "

(supplying the above blanks with the name and surname, residence and profession or calling of the person signing.)

The Right Hon. E. Hammond.

3 April 1867.

F.

Page

British Consul's District of

18___. Marriage solemnized at_____

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
57								

Married in the_____ according to the Rites and Ceremonies of_____ by_____ by me,

_____

This Marriage was solemnized between us, { _____ / _____ } in the Presence of us, { _____ / _____ }

18___. Marriage solemnized at_____

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
58								

Married in the_____ according to the Rites and Ceremonies of_____ by_____ by me,

_____

This Marriage as solemnized between us, { _____ / _____ } in the Presence of us, { _____ / _____ }

G.

British Consul's District of

18___. Marriage solemnized at_____

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.	Rank or Profession or Father.

Married in the_____ according to the Rites and Ceremonies of_____ by_____ by me,

_____

This marriage was solemnized between us, { _____ / _____ } in the Presence of us, { _____ / _____ }

18___. Marriage solemnized at_____

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.

Married in the_____ according to the Rites and Ceremonies of_____ by _____ by me,

_____

This Marriage was solemnized between us, { _____ / _____ } in the Presence of us, { _____ / _____ }

I, British Consul, residing at , do hereby certify, That this is a true Copy of the Entries of Marriages registered in my Office, from the Entry of the Marriage of and , Number to the Entry of the Marriage of and , Number

Witness my Hand and Seal, this day of

H.

MARRIAGE.

BRITISH CONSUL'S ANNUAL "NIL" RETURN.

Consul's district of

I consul, residing do hereby certify that no marriage has been registered in the Marriage Register Books kept by me, during the year from the 1st January 18 , to the 31st December 18 .

Witness my hand and seal, this day of 18 .

N.B.—This certificate is to be transmitted to the Secretary of State for Foreign Affairs in the month of January in each year.

I.

British Consulate at

The following inquiries may be made of a party applying for a marriage licence.

1. His name.
2. His residence.
3. Whether he be a bachelor or widower.
4. If a bachelor, whether he be of the full age of twenty-one years.
5. The name of his intended wife.
6. Her residence.
7. Whether she be a spinster or widow.
8. If a spinster, whether she be of the full age of twenty-one years.
9. Whether there be any consanguinity, affinity, or any other lawful impediment.
10. Whether either of the parties have lived in the place in which the marriage is to be solemnized, for the last calendar month.
11. If either of the parties be a minor, whether the consent of the parent or guardian has been obtained.

WHEREAS, by the 19th section of the Act of the 12th and 13th of Her Majesty, cap. 68, entitled, "An Act for "facilitating the marriages of British subjects resident in "foreign countries," it is enacted, "That every British "consul-general and consul already appointed, or hereafter "to be appointed, to reside in any foreign country or place, "who shall be directed or authorized, by writing under the "hand of one of Her Majesty's Principal Secretaries of "State, to solemnize and register marriages, and any per-"son duly authorized to act in the absence of such consul, "or in any foreign place where there is no British consul "resident, any vice-consul or consular agent who shall be "directed or authorized as aforesaid by one of Her Majesty's "Principal Secretaries of State to solemnize and register "marriages in such place, shall in the country or place in "which he is so appointed to reside, or in which he is "directed or authorized to solemnize and register marriages "as aforesaid, be a consul duly authorized for all the "purposes of this Act; and in the construction of this Act "the term 'consul' shall (save where such construction "would be inconsistent with the context) be construed to "mean a consul so authorized; and the district of every "such consul for the purposes of this Act shall be all or "such parts of the foreign country in which (or at a place "within which) such consul is appointed to reside, or is so "directed or authorized as aforesaid, as such Secretary of "State may, by such writing under his hand, direct, or "where there shall be no direction in this behalf, shall be "the district of the consulate of such consul,"—

I hereby authorize you, the British consul appointed to reside at to solemnize and register marriages under the provisions of the above recited Act, and in the form and manner therein prescribed.

And for so doing this shall be your warrant.

Given at the Foreign Office in London this day of

Her Majesty's Principal Secretary of State for Foreign Affairs.

Circular.

No.

Foreign Office, 186 .

SIR, I AM directed by to transmit to you the enclosed warrant, to enable you to solemnize marriages within your consular district, under the Act 12 & 13 Vict. c. 68.

You will pay particular attention to the provisions of that Act, and to the instructions given to Her Majesty's consul on this subject in the despatch from this office, marked 18 , as well as in the circular despatches of August 20, 1853, and July 1, 1857; and you will be careful to send home the returns thereby required.

You will acknowledge the receipt of this despatch.

I am, sir,

Your most obedient, humble servant,

The Right Hon. E. Hammond.

3 April 1867.

Circular.

Foreign Office, August 20, 1853.

HER Majesty's Government having been informed that, since the passing of the "Marriages in Foreign "Countries Facilitating Act" (12 & 13 Vict. c. 68.), doubts have in some instances arisen as to the person by whom, and the place where, marriages rendered valid by that Act are to be solemnized, I have to inform you that, in pursuance of the Act in question, British consuls general, consuls,—or any person duly authorized to act in the absence of such consul,—vice-consuls, and consular agents may, subject to the rules there in laid down, solemnize such marriages, provided they shall have previously received a warrant from the Secretary of State specially authorizing them to solemnize and register marriages, or to allow marriages to be performed in their presence. No other persons whatsoever are qualified by the Act to solemnize marriages, or to allow them to be solemnized by any other person in their presence.

Any form of ceremony, according to the creed of the contracting parties, may be used; and the religious portion of the ceremony may be performed by a clergyman of any denomination; but the presence of the duly authorized consular officer is necessary to render such marriage valid; and if the ceremonial be not that of the Church of England and Ireland, which can only be duly performed by an ordained clegyman of that Church, the contracting parties are to make a declaration before the consul, in words prescribed by the Act, that they know not of any lawful impediment why they may not be joined in matrimony, and that they call upon the persons present to witness that they take each other respectively to be lawful wedded husband and wife; and such declaration, in the absence of any religious ceremony, is sufficient.

The only *place* where marriages, under this Act, may be solemnized, is the "*British consulate*;" that is, the public office of the consul-general, consul, vice-consul, or consular agent, as the case may be; and every such marriage must be solemnized with open doors, between the hours of eight and twelve in the forenoon, in the presence of two or more witnesses.

Hence it follows that no marriages performed at other places, or under other circumstances, will be valid *under this Act*; and accordingly marriages cannot be solemnized *under this Act* in any churches or chapels, even though attached to British missions or connected with British consulates abroad, nor can they be solemnized under this Act by an ambassador, minister, or other diplomatic agent of the Crown.

I transmit to you for your information, a copy of the Acts of Parliament in question. You will, however, therein perceive that the Act 4 Geo. 4. c. 91., also herewith enclosed, remains still in force, and legalizes marriages solemnized *by a minister of the Church of England* in the chapel, or house, of any British ambassador or minister residing within the country to the Court of which he is accredited.

I may add that all marriages duly solemnized according to the local law in force, so as to be valid by that law in the country where they are solemnized, will be valid in England.

I am,

most obedient humble servant,

The Right Hon. E. Hammond.

3 April 1867.

359.

Circular.

Foreign Office,
July 1, 1857.

In consequence of some information which has been communicated to this office, I think it right, after consulting the law officers of the Crown, to make known generally to Her Majesty' diplomatic and consular servants abroad, that it was the intent and object of the Act 12th and 13th Vict. c. 68, no less than of the Act of the 4th George 4, c. 91, to authorize the solemnization, in Her Majesty's missions or consulates abroad, of such marriages only as might lawfully be contracted and solemnized within Her Majesty's dominions. Marriages of British subjects domiciled in foreign countries, which are solemnized according to the "*lex loci*," are not affected by these Acts. But it being the law of Great Britain and Ireland that marriage with a deceased wife's sister is void, such a marriage would derive no validity from the circumstance of its being solemnized in a foreign country under the 4th George 4, c. 91, or 12th and 13th Vict. c. 68, although the law of such country may not prohibit such marriages.

I have accordingly to instruct you in all cases where parties present themselves to be married at your not only to assure yourself, as far as possible, that there is no legal impediment, according to English law, to the marriage of such parties, but also to warn all parties indiscriminately that a marriage which would not be valid if solomnized in England, would be equally invalid if solemnized at a British mission or consulate, notwithstanding the "*lex loci*" prevailing generally with regard to marriage in the country where the minister or consul resides.

I am, &c.

Circular.

Foreign Office,
September 26, 1866.

Sir,

A question having been raised as to the competency of Her Majesty's consuls to grant the certificate required by the 103rd article of the new Civil Code, with reference to the marriage of a foreigner in the Italian dominions, and as to the formalities which should be gone through before the issue of such certificate, I am directed by Lord Stanley to instruct you, in the event of any application being made to you for a certificate of the nature above referred to, to call upon the parties to go through the form required by the 6th section of the "Marriages in Foreign Countries Facilitating Act" (12 & 13 Vict. cap. 68); and, upon their making the solemn affirmation or declaration thereby required, there will be no objection to your issuing a certificate in the following terms, which Lord Stanley has ascertained will be accepted as sufficient by the Italian authorities:—

"A. B. and C. D. having gone through the formalities
" required by the law of Great Britain, for enabling them
" to be married at Her Majesty's consulate, I,
" , Her Britannic Majesty's consul at
" , upon the evidence laid before me, hereby
" certify that according to the laws of Great Britain there
" is no obstacle to the celebration of their marriage."

I am, sir,
Your most obedient, humble servant,

Her Majesty's Consul.

Circular.

No.

Foreign Office,
February 28, 1867.

My attention has lately been called to the question of the validity of marriages celebrated in the house of Her Majesty's diplomatic representatives in foreign countries, between British subjects and foreigners; and having consulted the proper law officer of the Crown on this point, I have to instruct you, in order that Her Majesty's subjects may understand the position in which they would stand under such circumstances, to apprize them on all such occasions that a marriage of this nature is not necessarily valid without the dominions of Her Majesty.

I am, &c.

Communication from the Registrar-General as to a recent Marriage between Uncle and Niece.

General Register Office,
Somerset House,
11th January 1868.

An instance of a marriage between a niece and her uncle has lately been brought under my notice by the incumbent of the parish of Speen, near Newbury.

The woman having signed the prescribed declaration gave to the superintendent registrar of Newbury notice of a marriage by licence.

In the course of the day, after receiving the notice and previous to the proposed celebration of the marriage, upon inquiry he found that she had committed perjury, and was about to be married to her uncle.

He of course most properly, although by so doing he lost fees amounting to upwards of 30s., refused to grant the licence, and thus put a stop to this scandalous proceeding in this rural district of Speen.

But what occurred? These parties proceeded forthwith to Doctors' Commons, made the required affidavit, paid the required fees, and, subjected to no inquiry as to the truth of their statement as to previous residence, as to affinity or consanguinity, or anything else, immediately received licence to marry from the Vicar General's office, were forthwith married in London, and in the most shameless manner returned to the country village; and there they continue to live together, setting the clergyman and others at defiance, as they know that no step can be taken to separate them, and that for the false affidavit made at the Vicar General's office they cannot be convicted as perjurers.

Reply to the above,—by the Registrar-General of the Province of Canterbury.

Vicar-General's Office,
Doctors' Commons,
17th February 1868.

The person referred to by the Registrar-General represented herself to be a spinster, and her future husband to be a widower; she was carefully questioned, according to the rules of the office, as to the names of both parties their residences and ages, and whether she had resided 15 days in the parish of Saint Pancras; her answers were entered in the Book of Instructions, specially kept for that purpose, and thereupon the affidavit to lead the licence was prepared from the instructions, and was carefully read over to her, so that she might thoroughly understand the contents, after which she was allowed to sign the same, and then was taken before the sitting surrogate, who swore her to the truth of the affidavit. After that had been done the licence was made out and the affidavit filed. The young woman was some time in the registry before the licence was made out, and, there is no doubt, that she perfectly knew what she was swearing to.

There are no peculiar circumstances which would prevent the party in this case from being prosecuted for perjury that I am aware of.

With reference to the Registrar-General's statement " that the parties were married in London, and in the most " shameless manner returned to the country village, and " there continue to live together, setting the clergyman and " others at defiance." I have to state, that I had been in communication with the rector of the parish before I received your letter,* and he has informed me that these parties, who are uncle and niece by affinity, have been cohabiting together at a beershop in the parish for a long time; that the woman has had a child by her uncle a year ago, and is now supposed to be in the family-way again by him, which was the probable cause of her wishing to get married; the scandal, therefore, of their living together, of which the Registrar-General complains, has unfortunately been in existence for some years.

In reply to a letter received from the young woman I wrote to say that the marriage was absolutely null and void, and that cohabitation ought immediately to cease and that she had rendered herself liable to be punished for having made a false affidavit.

Upon referring to the entries in the Book of Instructions above mentioned for the last month I find that there are as many as 23 entries of names of parties in regard to whom the inquiries made were not satisfactory, and consequently they were sent away without licences, and this I may add is a circumstance of daily occurrence.

The suggestion, therefore, of the Registrar-General that licences are granted without due inquiry is quite unfounded.

* This refers to a letter from the Secretary.

OBSERVATIONS BY THE RIGHT HONOURABLE WILLIAM MONSELL, M.P., AND THE RIGHT HONOURABLE MR. JUSTICE O'HAGAN, ON THE DRAFT REPORT AS AT FIRST PREPARED.

Mr. Monsell and Mr. Justice O'Hagan's observations.

We regret that we cannot attend the meeting of the Commissioners fixed for the 18th of January. The more we consider the various questions raised in the draft report, the more important we feel it that, before coming to a final judgment upon them, we should have the opportunity of discussing those questions, many of them difficult and delicate, with the other Commissioners.

As, however, we have been requested, in the event of our not being able to attend, to express our opinions in writing upon the draft report, we shall endeavour to do so, in its relations to Roman Catholic marriages, that we may, as far as we can, assist the deliberations of our colleagues.

Roman Catholic marriages in Ireland are governed by the decrees of the Council of Trent; and, putting aside cases of affinity and consanguinity, with which the Commission does not propose to deal, are (except in the case of mixed marriages) not interfered with or controlled by the civil law.

No practical evils have been proved to arise from the exercise of that freedom. It is legitimately regulated at present by a more precise and effectual application of the rigid Tridentine discipline than at any former period.

The sexual morality of the Irish people, probably without a parallel in Europe or in the world, strongly attests the beneficial working of the existing system.

The effects of the penal law with regard to mixed marriages are, no doubt, both unjust and inconvenient. We believe that by the mode proposed in the Bill of the late Lord Campbell, that injustice and inconvenience might be easily removed; but the Irish Catholics would be slow to purchase such an amendment of the law by consenting to the abridgment of the liberty now enjoyed by their Church.

We anticipate, also, considerable opposition to any enactment which would require the Catholic clergy to discharge duties prescribed by the State, so long as their ecclesiastical position is legally ignored, and the assumption of their proper titles subjects them to legal penalties.

These considerations oppose serious difficulties to the adoption of a uniform marriage law, so far as Ireland is concerned. But we fully recognize the inconvenience of the diversity of the existing systems in the several parts of the United Kingdom, and we consider it in the highest degree desirable, if it be possible, to give them uniformity.

We appreciate the large and liberal spirit which characterises the draft report.

We fear, however, that in certain points, as to which we trust, upon consideration, a satisfactory arrangement may be arrived at, it would conflict both with the habits of the Irish people and with the doctrine and discipline of the Catholic Church.

In the first place, we cannot subscribe to any expressions which imply a power in the State to affect the constitution or *vinculum* of marriage, though we admit that conditions may be imposed by it the non-observance of which would justify the civil power in not recognizing a marriage, or in withholding from it civil effects. This jurisdiction of the State is clearly indicated by the bishops of the province of Leinster *supra*, p. 32, under the head of *Civil Marriages*.

We should, therefore, omit the words, "as well "concerning the constitution as." In the third last line of the same page we would omit the words "in a purely civil form;"—for, although, according to the Catholic doctrine, marriage may be validly contracted without the intervention of a clergyman, where the Council of Trent is not published, still, however the contract may be made between Christians, it is sacramental, and, therefore, not a *purely civil form*.

For the same reason we cannot adopt the late Bishop of Derry's words, describing marriage as "essen- "tially a civil contract" (supra, p. 34), or any others which may convey the same idea.

We do not see that the assertion of the principle of State control over the constitution or *vinculum* of marriage, or of its civil character, is necessary to sustain or warrant the legislation subsequently proposed. The refusal of civil recognition of the marriage will be quite sufficient sanction for any such legislation, and this is the highest power the State can exercise.

We cannot adopt the recommendation that the intermarriage of persons declared to have been guilty of adultery together by the sentence of a divorce court shall no longer be prohibited. As Roman Catholics we hold that marriage is indissoluble, and that divorce *à vinculo* is contrary to the law of God; and we are therefore unable to approve a proposal involving the recognition of a system which to us is inadmissible, and the removal of a barrier against its operation.

Supposing the changes we have suggested to be adopted by the Commission, and that the civil invalidity of marriage shall be declared to involve no more than a refusal of civil effects, we now have to consider the nature of the practical suggestions of the proposed report.

These are two, namely, that which would change the present law as to the age of matrimonial capacity, and that which would refuse civil recognition to marriages not celebrated before a certified minister or registrar.

As to the first, we think it undesirable to make a change in the existing law. The Canon Law fixed the age of capacity at 14 for males and 12 for females; and, whatever may be the advantages, socially, of the change proposed, we apprehend that, as marriages of very young persons are not common in this country, those advantages might be counterbalanced by the creation of a new antagonism between the discipline of the church and the law of the land.

As to the second suggestion, we fully approve the recommendation of the report, that all marriages should take place in the presence of a duly authorized official celebrant or witness.

Having thus stated our opinions on those parts of the report which regard the constitution of marriage, and may affect the religious principles of Catholics, we pass on to some of the proposed regulations which are only directory, and involve questions of expediency.

Under this head, the two most important suggestions of the report regard "Notice and Residence" and "Registration."

As to the first of these, we fear that difficulty may exist from the habits of our people, and from the system of episcopal dispensation to which they have been accustomed. Matrimonial engagements are formed amongst them with great rapidity, and there are many cases in which the Catholic clergy hold it a matter of conscience to celebrate marriages promptly; morality, character, illness, or imminent death, and, more frequently, immediate emigration of both parties, creating the necessity. We think it would be found often impracticable to enforce strictly the suggested provisions as to "Notice and Residence," and that it should be considered whether the power to dispense may not be more largely recognized in the bishops.

As to the registration clause, its principle is just and unobjectionable: and we would gladly see it carried into effect: but we believe that the Catholic clergy will not be disposed to discharge a civil function under the pressure of legal penalty, until complete religious equality shall have been established in this country. However, we think the recommendation in the abstract perfectly right and reasonable.

We fear there may be some difficulty encountered as to the registering of churches and chapels; and as special locality does not seem to be made essential to the celebration of marriage, we submit for consideration whether the certificate of the bishop as to the clergyman whom he thinks fit to be the celebrant may not be held sufficient to guard against abuses.

The communication of notices seems too complicated a process. The Roman Catholic clergy would scarcely comply with the proposed regulations in a general and effectual way.

We would omit the word "ecclesiastical" in the sentence providing for the effect of the certificate of the minister or civil officer.

The alternative suggested,—"ought to be allowed,"—should be substituted for "might be allowed." We would also omit the words "if it were thought "expedient, though the simpler rule seems to us "unobjectionable."

In conclusion, we remark that the description of the law of clandestinity in the Roman Catholic Church is not quite correct. Besides the presence of the bishop or priest, the presence of two witnesses is absolutely necessary; otherwise, wherever the Council of

Mr. Monsell and Mr. Justice O'Hagan's observations.

Trent has been published, the marriage is null and void. Might not the adoption of a like rule for all marriages be an adequate protection against clandestinity, and so preclude the necessity of a complicated system of notices? The proclamation of banns, if not dispensed with by the bishop, is necessary for the legality, but not for the validity of Roman Catholic marriages.

We have made no reference to English Catholic marriages, as we consider the suggestions of the report well calculated to redress the grievances of which the English Roman Catholic bishops complain. And we have not adverted to the proposals of the draft report as they affect England and Scotland generally, because we desire, before forming opinions definitively upon them, to know the views of the English and Scotch Commissioners, who are so much better qualified to judge of them from local knowledge and experience.

W. MONSELL.
THOMAS O'HAGAN.

Dublin,
January 18, 1868.

Note as to Marriages under the Code Napoleon.

NOTE AS TO MARRIAGES UNDER THE CODE NAPOLEON.

Working of the Code Napoleon as to marriage Inquiry.

A DESIRE having been expressed by Her Majesty's Commissioners on the Laws of Marriage to know the working of the "Code Napoleon" with reference to the constitution and proof of marriage, especially in Roman Catholic countries,—the Secretary, while recently in France and Belgium, endeavoured to procure the required information; having had, through the kindness of Sir George Grey, the benefit of despatches from Earl Russell to Her Majesty's representatives at Paris and Brussels, requesting their aid in the inquiry.

The matter set out on this and the three following pages is the result.

All marriages must be by civil ceremony,

The Code Napoleon requires that all marriages shall be entered into before the civil magistrate; and no minister of religion can* officiate or interfere until a certificate has been presented to him certifying that the parties have contracted matrimony before the civil magistrate (usually the Mayor or his deputy) at the Mayoralty, Hotel de Ville, or Maison Communale of the arrondissement.

There is no choice.

Persons, therefore, who live under the Code Napoleon must either continue single or be married by a purely civil ceremony of the shortest and simplest description.

The civil ceremony completes the marriage legally.

That civil ceremony makes the marriage, *in the eye of the law*, to all intents and purposes complete.

But followed by a religious ordinance.

Those concerned, however, are not required or expected to rest satisfied with it. On the contrary, every facility (not to say encouragement) is afforded for the subsequent interposition of the sacred office.

Certificate for the priest.

The certificate of the secular union is granted expressly *pour servir aux cérémonies religieuses;* and it issues without charge where the parties are in poverty.

Resort to the church after the civil ceremony.

If they are Roman Catholics (generally the case under the Code Napoleon), they, at the close of the civil ceremony repair forthwith to church, where the priest, on receiving the indispensable certificate, unites spiritually at the altar those who have already been united civilly at the Hotel de Ville; thereby (in the words of the First Consul†) "impressing the seal of religion on that union which has already received the seal of the law."

Satisfaction consequently felt.

The priest is naturally soothed and gratified by the ready and pious obedience of his faithful disciples, who, under the force of religious obligation, seek from the holy ordinance that comforting assurance which befits the most solemn of engagements. Other considerations too of a more worldly character may be supposed to operate on the French and Belgian mind, such as the credit and respectability which are retained or acquired by complying with the dictates of traditional decorum.

Neglect of the religious ordinance rare.

The average result is that, in at least 95 cases out of every 100 in France, the parties who contract before the civil officer ask afterwards and receive the sacerdotal benediction. As to Belgium there is no return, but it is certain that the same deferential sentiment predominates in both countries. If there are some (certainly not many) who repose on the civil ceremony without renewing their vows in any place of worship, the effect is simply that the sacred ordinance is restricted to those who approach it reverentially.

Clergy not bound to officiate.

Where any canonical impediment appears, the minister of religion withholds his rite. Three publications of banns usually precede the religious ceremony.

Precautions and formalities antecedent to marriage.

The antecedent public notification that a marriage between given parties is intended; the reception and the disposal of objections to the proposed union; the acceptance of the required consents from relatives; the administration of the civil rite whereby the marriage is completed; the formal recording of it in duplicate registers committed to the custody of distinct officials; finally, the preservation of the evidence which shall prove the marriage in the event of any subsequent challenge or inquiry;—all these are matters which the Code Napoleon places exclusively in the hands of civil functionaries, whose inquisitorial vigilance and circumspection are said to render clandestinity and deception next to an impossibility.

How these ends are attained the following propositions will indicate:—

1. Before the celebration of a marriage the civil officer shall make two distinct publications of it, and shall announce, by placards fixed and retained on the door of the town hall, the christian names, surnames, professions, and domiciles of the parties.
2. One of the publications shall be on a Sunday, and there shall be an interval of eight days between each.
3. The marriage shall not be celebrated till after the third day from the second publication.
4. The two publications shall be made in the municipalities of the places where the contracting parties shall have their respective domiciles.
5. If the contracting parties or either of them be under the authority of others, the publication shall be made in the municipalities of the domicile of those others.
6. Evidence of the ages of the parties must be supplied to show how far they are under or free from authority.
7. The son is absolutely incapable of marriage, even with the consent of parents, until he has attained the age of 18 years complete, and the daughter until she has attained the age of 15 years complete.
8. From these respective ages, until the son is 25 and the daughter 21, marriage may take place with consent, but not without.
9. From the respective ages of 25 and 21 the advice of father and mother, or of grandfather and grandmother, or of relatives, must be asked. This obligation lasts through life, its object being to elicit objections from those most likely to know and advance them.
10. The advice asked need not be given, and if given need not be followed. The law is satisfied by what is called the "respectful act" of soliciting it.

After a short interval, if no response and no objection appear, the marriage may take place.

12. Acts of opposition shall be signed and communicated to the parties at their domicile.
13. The civil officer shall pause till all impediments and doubts disappear.
14. When the marriage has not been celebrated within a year, the publications shall be repeated.
15. The civil officer neglecting these precautions and formalities shall be punished by fine and imprisonment.

FORM OF THE CIVIL CEREMONY OF MARRIAGE AT THE HOTEL DE VILLE, of the Town of ——. (*En séance publique.*)

THE MAYOR, seated in state and surrounded by officials, being attended by the parties seeking matrimony, their parents, relatives, and friends, proceeds to read and examine the documents which show that all the requisite preliminary notices and formalities have been duly carried out. He then addresses to the parties by way of admonition certain passages from the Code Civil, namely these,—

1. "Married persons owe to each other fidelity, succour, assistance;
2. "The husband owes protection to his wife, the wife obedience to her husband;

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* In dealing with offences calculated to compromise the personal status of individuals, the Code Penal (ss. 199. 200.) enacts that any minister of religion who shall venture to solemnize a marriage without the sanction of a previous civil act of marriage, had before the civil officer of the State, shall be punished by fine for the first offence, and by certain regulated terms of imprisonment for any repetitions of the transgression.

† Discussions du Code Napoléon par Jouneau et Solon, vol. i. p. 253.

3. "The wife is obliged to live with her husband and to follow him to every place where he may judge it convenient to reside; the husband is obliged to receive her and to furnish her with every thing necessary for the wants of life according to his means and station."

These cardinal maxims being enunciated with emphasis, ne effective scene in the formality next ensues as follows:

THE MAYOR. (Addressing the mother of the bride-room.) "Do you Madame Dufour consent to the mar-riage of M. Pierre Dufour your son with Mlle. Marie Talleux here present?"

MADAME DUFOUR. "I do."

THE MAYOR. (Addressing the father of the bride.) Do you M. Talleux consent to the marriage of Mlle. Marie Talleux your daughter with M. Pierre Dufour here present?"

M. TALLEUX. "I do."

THE MAYOR. (Addressing the bridegroom.) "Do you M. Pierre Dufour declare that you take for wife Mlle. Marie Talleux here present?"

M. PIERRE DUFOUR. "I do."

THE MAYOR. "Do you Mlle. Marie Dufour declare that you take for husband M. Pierre Talleux here present?"

MLLE. MARIE DUFOUR. "I do."

THE MAYOR. "In the name of the law, I declare that M. Pierre Dufour and Mlle. Marie Talleux are united by marriage."

This closes the ceremony, the parties on receipt of their ertificate withdrawing from the Mayor and resorting forth-ith to the "Minister of Religion.

ERTIFICATE of the CIVIL CEREMONY of MARRIAGE, granted in order to authorize its RELIGIOUS SO-LEMNIZATION.

We, the undersigned Mayor of the Town of ——, hereby rtify that M. Pierre Dufour [*describing him*] has contracted arriage before us this day, in the Maison Communale, ith la Demoiselle Marie Talleaux [*describing her*]. This rtificate, delivered the 2nd September 1865, is to serve the purpose of a religious ceremony, and is granted on nstamped paper by reason of poverty.

A. B., Mayor.

EXTRACT from the REGISTER of a CIVIL MARRIAGE, had in the City of Rheims;—showing a full attendance of Parents on both sides, as well as of relatives and friends to witness and attest the ceremonial.

4th September 1865.—At four o'clock in the afternoon, efore us, the Mayor of Rheims, publicly appeared at the lotel de Ville, Edward Thomson, merchant, living with is father and mother at Sandwich, England, born in the arish of St. Mary, district of Sandwich, county of Kent, ngland, on the 18th November 1841, a minor as to mar-age, son of William Thomson, merchant, aged 63 years, nd of Sarah Jackson, his wife, also aged 63 years, both them here present and consenting to the marriage of eir son. as they have now declared to us; and Louise [illegible], of no profession, living with her father and nother at 7, Grande Rue, Rheims, born at Rheims 15th pril 1838, of full age, daughter of Pierre Brondel, aged 1 years, and of Alix Josephine Destrée, his wife, aged 48 ears, both of them here present, and consenting to the arriage of their daughter, as they have now declared to s; the which parties so appearing before us have requested s to proceed to the celebration of the union projected be-ween them, of which the first and second publications have een proclaimed and placarded at Rheims, on Sunday 27th ugust last, and Sunday 3rd September instant, the con-racting parties declaring at the same time that they have ntered into no special matrimonial conventions; and no [illegible] opposition having been signified to us, we ive effect to their requisition, after having read all the [illegible] uced; and chapter 6 of the Code Civil, entitled Du Mariage;"—having demanded of the future spouses hether they will take each other for husband and wife, ach of them answering separately and affirmatively; we eclare, in the name of the law, that Edward Thomson nd Louise Isabelle Friselle are united in marriage. Witness his act, drawn up in presence of Joseph Flemin, propri-tor, aged 62 years; of François Dubois, proprietor, aged 2 years, friends of the husband; of Louis Destrée, builder, ged 43 years, maternal uncle of the wife; and of François [illegible] ietor, aged 62 years, paternal grand uncle of he wife (these four witnesses all resident in Rheims).

The father and mother of the husband, the father and mother of the wife, the two contracting parties, and the relatives and friends as witnesses sign the document, which closes with the attestation and Seal of

THE MAYOR.

Note as to Marriages under the Code Napoleon.

Occasionally by indulgence of the Government the marriage of favoured parties may take place elsewhere than at the Mayoralty or Hotel de Ville. Thus the *Times* of the 18th November last tells us that the marriage of Princess Anna Murat with the Duke de Mouchy took place at the house of the bride's father, No. 2, Avenue Montaigne, at half past 10 o'clock; the parties afterwards repairing in great state to the chapel of the Tuileries, where the religious ceremony was performed by the Archbishop of Paris.

Civil marriage in a private house.

Throughout France and Belgium the system, of which the above is a brief outline, has existed in full force since 1803. It has also been the law of Holland (a Protestant country) for the same period.

A statute, too, making it the rule in the kingdom of Italy, came into operation on the first day of January 1866.

The Code in force throughout France, Belgium, and Holland.

QUESTIONS SUBMITTED TO, AND ANSWERS RETURNED FROM, THE DEPARTMENT OF HIS EXCELLENCY THE MINISTER DE LA JUSTICE ET DES CULTES AT PARIS.

QUESTION 1.

What are the advantages of requiring that all marriages shall be entered into by a civil ceremony; and why not allow the parties to choose between a civil ceremony and a religious one?

ANSWER.

If marriage (in Christian communities at least) be a religious act, it is also the foundation of all civil society regularly organized. There is therefore no room for choice; for there exist two facts corresponding with two distinct orders of ideas.

The purely religious consequences of marriage are produced by the ceremony gone through in accordance with the rites of that religion to which the parties belong. The ministers of religion who preside have the mission of showing the compliance of the spouses.

On the other hand, the purely civil consequences of marriage, which ought to be the same to all the citizens of the State without any distinction, arise from formalities imposed by the civil law; and the functionaries of the State can alone proceed to administer the act and prove afterwards that it is regular.

The French law is therefore logical as well as liberal. She regulates that which belongs to her domain; but she leaves to all citizens the most perfect freedom to comply with the precepts of the religion followed by each.

The French clergy appear hitherto to have well understood this essential distinction, so useful for good order,—the distinction between the civil contract and the Sacrament, the State and the Church.

[M. Alanzet, Chef de la Division de Législation in Paris, with whom the Secretary had repeated conferences, remarked that in a country where there are several religious sects, and sundry different forms of religious celebration, the civil functionary would often have difficulty in judging as to the validity of purely religious marriages; whereas he can at once determine whether the civil form appointed by the Code Napoleon has, or has not, been duly carried out. Hence, said M. Alanzet, the advantages of the plain, uniform, and unequivocal course which that code imperatively prescribes.]

QUESTION 2.

In how many cases is the civil ceremony followed by a religious one?

ANSWER.

It is impossible to ascertain the number of cases in which the civil ceremony is followed by a religious one. But it may be safely affirmed that it is almost always so followed;—public opinion viewing with disfavour those who in such circumstances emancipate themselves from the duty imposed by their religion.

QUESTION 3.

Are incestuous marriages and bigamy frequent in France?

ANSWER.

The precautions required by law render incestuous marriages and cases of bigamy extremely rare in France.

To be satisfied of the rarity of incestuous marriages, it is only necessary to observe that independently of the difficulty

Note as to Marriages under the Code Napoleon.

of deceiving the civil officer, the parties themselves cannot be ignorant that a marriage so contracted must be null, and that the union thence arising must be a concubinage.

As to bigamy the case is somewhat different, because one of the parties in the case of bigamy may fancy that the marriage is unobjectionable. Nevertheless the system of the French law produces this happy result, that the crime of bigamy is extremely rare. The number of condemnations has not been in general for a long time past more than five per annum. It is possible that some cases may have escaped attention, and are consequently unprosecuted; but their number must be small, since there has been no occasion to take an account of them.

Question 4.

Is it not the fact that by reason of the multiplicity of impediments and compulsory formalities anterior to marriage, the parties often determine to disregard all restrictions and fall into concubinage?

Answer.

The formalities prescribed for marriage cannot be regarded as tending to concubinage.

The object above all things important is that the union shall not take place except under conditions advantageous to the contracting parties, and sanctioned by public opinion.

Among the impediments to marriage the law has placed, in certain cases, *age* and *relationship*.

As to *age*, it is principally determined by considerations of public order, based upon a due regard to the objects of matrimony.

With respect to *relationship*, it is to be observed that consanguineous marriages, whether within the tolerated limits, or permitted by dispensation from the Government, have been criticised by medical science as tending to the deterioration of races.

By the side of impediments arising from *age* and *relationship*, we place the obligation of obtaining the consent of parents. Up to a certain age it is not possible to emancipate children with reference to an act so important in life from a guardianship and a protection for them so evidently necessary. At a later stage, when they may be presumed to be more experienced and prudent, the actual consent is no longer essential, though required to be asked in token of submission and respect.

Such is the system adopted by the law of France. She has endeavoured to reconcile individual liberty with parental authority by relieving children at a certain age from the obligation of obtaining actual consent; but leaving them throughout their entire existence under the obligation of justifying themselves by *respectful acts*.

It has sometimes been said that the Code Napoleon is too indulgent to children, and that it has unduly relaxed the ties which unite them to their parents. This opinion is entertained by many excellent persons.

The writer of this note does not agree with them; but he believes that very serious inconveniences would arise from further extending the liberties of young persons in the matter of marriage.

[The parents may actually oppose; in which case the Mayor will refuse to exercise his function until the question has been determined. Recently a French count and countess instituted a suit to interdict the marriage of their daughter, alleging that she was insane. The Court ultimately gave judgment against the parents, and ordered the Mayor to proceed at once with the marriage.

In France marriage is regarded as a family affair, which, when contracted unhappily, disparages the relatives and disappoints the parents, who, therefore, are allowed to oppose, although the betrothed parties may be far advanced in life.]

Question 5.

Has the civil officer a fund to meet the charge of judicial proceedings?

Answer.

The civil officer ought not to proceed with any marriage which he considers prohibited by law.

It is not the civil officer who institutes judicial proceedings. They are commenced against him. His refusal has no other object and no other effect than simply that the question is carried before the proper tribunal, which, unless the Mayor appears to have acted with unfairness or in bad faith, never condemns him in costs.

Question 6.

What are the advantages of legitimation per subsequens matrimonium?

Answer.

The legitimation by the marriage of the father and mother has been held in all ages the most powerful incentive to the adoption of a right course by children.

When the illicit union is superseded by a regular marriage, legitimation can alone secure harmony between the afore and the after born issue. It restores both the parents and the offspring to the respect of their friends, and the affection of their relatives.

The foregoing Questions as submitted in the French language to the office of the Minister of Justice at Paris; and the Responses thereto.

The preceding six questions and answers are translated from the originals, which are given here to prevent any possible misapprehension.

The Secretary has much pleasure in acknowledging the valuable aid which he received in this matter, and indeed in the whole of this inquiry, from Mr. Maugham, an eminent English solicitor long established in Paris, and well known to our embassy there.*

Question 1.

Quels sont les avantages résultant de l'obligation qu'un mariage ait lieu par une cérémonie civile, et non par une cérémonie religieuse, sans laisser de choix aux parties?

Réponse.

Si le *mariage* (dans les communions chrétiennes au moins) est un acte religieux, il est aussi le fondement de toute société civile régulièrement organisée. Il n'y a donc pas lieu à faire un choix, mais il existe deux faits répondant à deux ordres d'idées différents.

Les conséquences purement religieuses du mariage seront produites par la cérémonie accomplie suivant les rites de la religion à laquelle appartiennent les parties; les ministres du culte qui y ont présidé auront la mission de constater la soumission des époux.

D'un autre côté, les conséquences purement civiles du mariage, qui seront les mêmes pour tous les citoyens sans distinction, résulteront des formalités imposées par la loi civile, et les fonctionnaires de l'État peuvent seuls procéder à cet acte et constater ensuite qu'il est régulier.

La loi Française est donc aussi conséquente que libérale; elle règle ce qui est de son domaine; et elle laisse à chacun la liberté la plus entière de se soumettre à tous les préceptes de la religion qu'il suit.

Le clergé Français, désormais, paraît avoir bien compris cette distinction essentielle, si utile au bon ordre, entre le sacrement et le contrat civil; entre l'Église et l'État.

Question 2.

Existe-t-il des statistiques qui établissent le nombre de cas où le mariage civil est suivi par la cérémonie religieuse, ainsi que le nombre de ceux où il ne l'est pas; et de quelle manière peut-on prendre communication de ces statistiques?

Réponse.

On ne peut savoir dans combien de cas le mariage civil a été suivi du mariage religieux; mais on peut dire qu'il en est ainsi presque toujours; l'opinion publique voit avec défaveur les personnes qui, dans cette circonstance, s'affranchissent des devoirs qu'impose la religion dans laquelle elles sont nées.

Question 3.

Quelles sont les précautions prises pour empêcher les mariages incestueux ainsi que la bigamie; existe-t-il des statistiques sur le nombre de crimes de cette nature comparé avec le nombre des mariages, et de quelle manière peut-on connaître à ces statistiques?

Réponse.

Les prescriptions légales suffisent pour rendre extrêmement rares les mariages incestueux et les cas de bigamie; il suffit pour comprendre la rareté des mariages incestueux, de se rappeler qu'outre la difficulté de tromper l'officier de l'État civil, les parties ne peuvent ignorer que le mariage contracté dans de pareilles conditions serait nul, et que l'union qui en résulterait ne serait qu'un concubinage.

Quant à la bigamie, il n'en est pas tout à fait de même, puisque l'une des parties peut penser contracter un mariage régulier. Cependant, le système des lois Françaises produit cet heureux résultat, que le crime de bigamie est très-rare.

* Mr. Maugham states that he has had frequent occasion to observe the questions that arise from the non-observance of the requirements prescribed by the Code Napoleon in the case of French parties marrying in England and English parties marrying in France.

…n nombre des condamnations n'a été, en moyenne, depuis …gtemps, que de *cinq* par année. Il est possible que …elques cas soient restés inconnus, et, par suite, non pour…ivis; ils doivent être trop peu nombreux, pour qu'il y ait … d'en tenir compte.

Question 4.

Les formalités requises pour le mariage, notamment en qui concerne le consentement du père et de la mère, ont elles pas pour résultat de faciliter le concubinage; et uels avantages y a-t-il à demander le consentement du ère et de la mère, ou à leur signifier des actes respectueux, ntérieurement aux mariages, même lorsque les parties ont teint l'âge où ce consentement ou ces actes respectueux ont requis?

Réponse.

Les formalités imposées au mariage ne peuvent être itiquées comme facilitant le concubinage, car ce qui nporte avant tout c'est que l'union n'ait lieu que dans les nditions avantageuses pour les parties contractantes et pprouvées par le sentiment public.

Au nombre des empêchements au mariage, la loi a mis, ns certains cas, *l'âge* et *la parenté*.

Pour l'âge, elle a été principalement déterminée par isons d'ordre public tirées du Cour du mariage.

Il n'en a pas été absolument ainsi pour *la parenté*. ependant les mariages consanguins, même dans les limites ù ils sont autorisés ou permis avec une dispense du ouvernement, ont été critiqués par la science médicale, u point de vue de l'abâtardissement de la race. A côté des mpêchemens tirés de l'âge et de la parenté, se place obligation de rapporter le consentement des parents. usqu'à un certain âge il n'était pas possible d'affranchir es enfants, pour un act aussi important de la vie, d'une telle et d'une protection, qui leur est evidemment néces…ire. Plus tard et lorsqu'ils sont plus avancés dans la vie, présumés plus expérimentés et plus raisonnables, le con…entement ne peut plus être exigé que comme une marque e soumission et de respect.

C'est le système adopté par la loi Française. Elle a ssayé de concilier ce qui est dû à la liberté de l'individu et autorité paternelle, en affranchissant les enfants à partir d'un certain âge de l'obligation de rapporter le consentement; mais en les soumettant, pour toute la durée de leur vie, à l'obligation de justifier *des actes respectueux*.

On a dit quelquefois que le Code Napoléon s'était montré trop facile pour les enfants, et avait à l'excès relâché les liens qui les unissent à leurs parents. Cette opinion est embrassée par de très-bons esprits. L'auteur de cette note ne considère pas cette critique comme fondée; mais il croit qu'il y aurait de graves inconvéniens à faire une plus large part à la liberté des enfants.

Question 5.

Faisant allusion à l'arrêt rendu par la Cour de Cassation, le 28 Février 1860, dans l'affaire de Madame Bulkley, en vertu de quelle autorité l'officier de l'État civil a-t-il pu se refuser de procéder à la célébration du mariage de cette dame, et sur quels fonds a-t-il pu faire face aux frais que cette affaire a pu lui occasionner?

Réponse.

Tout officier de l'État civil doit se refuser à procéder à un mariage qu'il considère comme prohibé par la loi. Ce n'est pas lui qui intente l'action en justice; c'est contre lui qu'elle est intentée. Son refus ne peut avoir d'autre but et d'autre résultat que de porter la question à décider devant l'autorité judiciaire; et les tribunaux, à moins qu'ils n'aient la preuve que le maire a agi par méchanceté et de mauvaise foi, ne le condamne pas aux dépens.

Question 6.

Quels sont les avantages de la légitimation des enfants naturels par le mariage subséquent du père et de la mère?

Réponse.

La légitimation des enfants par le mariage du père et de la mère a paru, de tout temps, le plus fort stimulant pour faire entrer dans la bonne voie ceux qui s'en étaient écartés; quand l'union illicite a été remplacée par un mariage régulier, cette légitimation, si de nouveau enfants survien…nent, peut seule maintenir le bon accord, l'honnêteté et la paix au sein de la famille.

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REPORT

OF

THE NEUTRALITY LAWS COMMISSIONERS;

TOGETHER WITH

AN APPENDIX

CONTAINING

REPORTS FROM FOREIGN STATES AND OTHER DOCUMENTS.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

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COMMISSION.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To Our right trusty and well-beloved Councillor Robert Monsey Baron Cranworth, Our right trusty and well-beloved Richard Monckton Baron Houghton, Our right trusty and well-beloved Councillor Sir Hugh McCalmont Cairns, Knight, a Judge of the Court of Appeal in Chancery, Our right trusty and well-beloved Councillor Stephen Lushington, Doctor of Civil Law, Judge of the High Court of Admiralty, Our right trusty and well-beloved Councillor Sir William Erle, Knight, Our trusty and well-beloved Sir George William Wilshere Bramwell, Knight, one of the Barons of the Court of Exchequer, Our trusty and well-beloved Sir Robert Joseph Phillimore, Knight, Doctor of Civil Law, Our Advocate General, Our trusty and well-beloved Sir Roundell Palmer, Knight, Our trusty and well-beloved Travers Twiss, Doctor of Civil Law, Our trusty and well-beloved William George Granville Venables Vernon Harcourt, Esquire, one of Our Counsel learned in the Law, Our trusty and well-beloved Thomas Baring, Esquire, Our trusty and well-beloved William Henry Gregory, Esquire, and Our trusty and well-beloved William Edward Forster, Esquire, greeting.

Whereas We have deemed it expedient that a Commission should forthwith issue to inquire into and consider the character, working, and effect of the Laws of this Realm, available for the Enforcement of Neutrality during the existence of hostilities between other States with whom We are at peace; and to inquire and report whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency and bringing them into full conformity with our international obligations.

Now know ye, that We, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these presents authorize and appoint you the said Robert Monsey Baron Cranworth, Richard Monckton Baron Houghton, Sir Hugh McCalmont Cairns, Stephen Lushington, Sir William Erle, Sir George William Wilshere Bramwell, Sir Robert Joseph Phillimore, Sir Roundell Palmer, Travers Twiss, William George Granville Venables Vernon Harcourt, Thomas Baring, William Henry Gregory, and William Edward Forster, to be Our Commissioners for the purposes aforesaid.

And for the better effecting the purposes of this Our Commission, We do by these presents give and grant to you, or any five or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this Our Commission, and also to call for, have access to, and examine all such books, documents, registers, and records as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And We do by these presents will and ordain that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any five or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And We do further ordain that you, or any five or more of you, may have liberty to report your proceedings under this Commission from time to time, if you should judge it expedient so to do.

And Our further will and pleasure is that you do, with as little delay as possible, report to Us under your hands and seals, or under the hands and seals of any five or more of you, your opinion upon the several points herein submitted for your consideration.

And for your assistance in the due execution of this Our Commission, We have made choice of Our trusty and well-beloved Francis Phipps Onslow, Esquire, Barrister-at-Law, to be Secretary to this Our Commission, and to attend you, whose services and assistance We require you to use from time to time as occasion may require.

Given at Our Court at St. James's, the Thirtieth Day of January 1867, in the Thirtieth year of Our Reign.

By Her Majesty's command.

S. H. WALPOLE.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners, appointed "to inquire into and consider the character, working, and effect of the laws of this realm available for the enforcement of neutrality during the existence of hostilities between other States with whom Your Majesty is at peace, and to inquire and report whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency and bringing them into full conformity with Your Majesty's international obligations," beg now to state to Your Majesty that we have held twenty-four meetings, and having inquired into and considered the subject so referred to us, have agreed to the following Report:—

The Statute now available for the enforcement of neutrality during the existence of hostilities between States with whom Your Majesty is at peace is the 59 Geo. III. c. 69, commonly called the "Foreign Enlistment Act." The title of that Act is "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping in His Majesty's dominions vessels for warlike purposes without His Majesty's licence." And the preamble runs thus: "Whereas the enlistment or engagement of His Majesty's subjects to serve in war in foreign service without His Majesty's licence, and the fitting out and equipping and arming of vessels by His Majesty's subjects without His Majesty's licence for warlike operations in or against the dominions or territories of any foreign Prince, state, potentate, or persons exercising or assuming to exercise the powers of Government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign Prince, state, potentate, or persons as aforesaid, or other subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom: And whereas the laws in force are not sufficiently effectual for preventing the same."

This, then, being the Statute directly available in this country for the enforcement of neutrality, our duty has been to inquire and report whether it is susceptible of any and what amendments, and we are of opinion that it might be made more efficient by the enactment of provisions founded upon the following resolutions:—

I. That it is expedient to amend the Foreign Enlistment Act by adding to its provisions a prohibition against the preparing or fitting out in any part of Her Majesty's dominions of any naval or military expedition to proceed from thence against the territory or dominions of any foreign state with whom Her Majesty shall not then be at war.

II. That the first paragraph of sect. 7 of the Foreign Enlistment Act should be amended to the following effect:—

If any person shall within the limits of Her Majesty's dominions—

(a.) Fit out, arm, dispatch, or cause to be dispatched, any ship with intent or knowledge that the same shall or will be employed in the military or naval service of any foreign power in any war then being waged by such power against the subjects or property of any foreign belligerent power with whom Her Majesty shall not then be at war:

(b.) Or shall within Her Majesty's dominions build or equip any ship with the intent that the same shall, after being fitted out and armed either within or beyond Her Majesty's dominions, be employed as aforesaid:

(c.) Or shall commence or attempt to do, or shall aid in doing, any of the acts aforesaid, every person so offending shall be deemed guilty of a misdemeanor.

III. That in order to enable the Executive Government more effectually to restra and prevent attempted offences against sect. 7 of the Foreign Enlistment A additional provisions to the following effect should be inserted in the statute.

(*a.*) That if a Secretary of State shall be satisfied that there is a reasonal and probable cause for believing that a ship which is within the lim of Her Majesty's dominions has been or is being built, equipped, fitt out, or armed contrary to the enactment, and is about to be taken beyo the limits, or that the ship is about to be despatched contrary to t enactment, such Secretary of State shall have power to issue a warra stating that there is such a reasonable and probable cause for believing above aforesaid, and upon such warrant the Commissioners of Custo or any other person or persons named in the warrant shall have power arrest and search such ship, and to detain the same until it shall either condemned or released by process of law, or in manner herein-af mentioned.

(*b.*) That the power herein-before given to a Secretary of State may, in pa of Her Majesty's dominions beyond the seas, be exercised by the Gover or other person having chief authority.

(*c.*) That power be given to the owner of the ship or his agent to apply to t Court of Admiralty of the place where the ship is detained, or, if there no such Court there, to the nearest Court of Admiralty for its release.

(*d.*) That the Court shall put the matter of such detention in course of t between the applicant and the Crown, with usual Admiralty appeal to Privy Council.

(*e.*) That if the owner shall establish to the satisfaction of the Court that ship was not and is not being built, equipped, fitted out, or armed, intended to be despatched, contrary to the enactment, the ship shall released and restored.

(*f.*) That if the owner shall fail to establish to the satisfaction of the Court t the ship was not, and is not being, built, equipped, fitted out, or arm or intended to be despatched, contrary to the enactment, then the s shall be detained till released by order of the Secretary of State, nev theless the Court may, if it shall think fit, order its release, provided owner shall give security to the satisfaction of the Court that the ship sh not be employed contrary to the enactment, and provided that no p ceedings are pending for its condemnation.

(*g.*) That if the Court shall be of opinion that there was not reasonable probable cause for the detention, and if no such cause shall appear in course of the proceedings, the Court shall have power to declare that owner ought to be indemnified by the payment of costs and damag which in that case shall be payable out of any monies legally applicable the Commissioners of the Treasury for that purpose

(*h.*) That any warrant of the Secretary of State shall be laid before Parliame

(*i.*) That the proceedings herein provided shall not affect the power of Crown to proceed if it thinks fit to condemnation of the ship.

(*k.*) That the following exceptions be made from this Resolution :

1. Any foreign commissioned ship :
2. Any foreign non-commissioned ship despatched from this cou after having come within it under stress of weather or in the cou of a peaceful voyage, and upon which ship no fitting out or equipp of a warlike character shall have taken place in this country.

IV. That it is expedient to make the act of hiring, engaging, or procuring person within Her Majesty's dominions to go on board any ship, or to emb from any part of Her Majesty's dominions by means of false representation to the service in which such persons are intended to be employed, with int on the part of the person so hiring, engaging, or procuring as aforesaid, that persons so hired, engaged, or procured as aforesaid shall be employed in any l or sea service prohibited by section 2 of the Foreign Enlistment Act, a m demeanor, punishable like other misdemeanors under the same section.

V. That the forms of pleading in informations and indictments under the Fore Enlistment Act should be simplified.

VI. That if, during the continuance of any war in which Her Majesty shall be neut any prize not being entitled to recognition as a commissioned ship of war s

be brought within the jurisdiction of the Crown by any person acting on behalf of or under the authority of any belligerent government, which prize shall have been captured by any vessel fitted out during the same war for the service of such government, whether as a public or a private vessel of war, in violation of the laws for the protection of the neutrality of this realm, or if any such prize shall be brought within the jurisdiction as aforesaid by any subject of the Crown, or of such belligerent government, having come into possession of such prize with notice of the unlawful fitting out of the capturing vessel, such prize should upon due proof in the Admiralty Courts at the suit of the original owner of such prize or his agent, or of any person authorized in that behalf by the government of the state to which such owner belongs, be restored.

VII. That in time of war no vessel employed in the military or naval service of any belligerent which shall have been built, equipped, fitted out, armed, or despatched contrary to the enactment, should be admitted into any port of Her Majesty's dominions.

n making the foregoing recommendations we have not felt ourselves bound to consider ether we were exceeding what could actually be required by International Law, but are of opinion that if those recommendations should be adopted, the Municipal v of this realm available for the enforcement of neutrality will derive increased iency, and will, so far as we can see, have been brought into full conformity with ur Majesty's international obligations.

Ve have thought it better to present our recommendations in the form of general olutions laying down the principles on which legislation should be framed rather n to attempt to draw up in detail the precise form of the statute.

Ve have subjoined, in an Appendix to this Report, certain papers relating to the vs of foreign countries on this subject, which have been communicated to us by ur Majesty's Secretary of State for Foreign Affairs, together with a short historical norandum prepared by Mr. Abbott* for our information, and some other documents strative of the subject.

All which we submit to Your Majesty's gracious consideration.

CRANWORTH.	(L.S.)
HOUGHTON.	(L.S.)
CAIRNS.	(L.S.)
W. ERLE.	(L.S.)
G. W. W. BRAMWELL.	(L.S.)
R. J. PHILLIMORE.	(L.S.)
ROUNDELL PALMER.	(L.S.)
T. TWISS.	(L.S.)
W. VERNON HARCOURT.	(L.S.)
T. BARING.	(L.S.)
W. H. GREGORY.	(L.S.)
W.E . FORSTER.	(L.S.)

Dr. Lushington did not sign the Report, as he was, from indisposition, unable to attend the meetings after e 1867.

EASONS GIVEN BY MR. VERNON HARCOURT FOR DISSENTING FROM CERTAIN PORTIONS OF THE REPORT.

Though the undersigned has signed the Report, he wishes it to be understood that he s only signed it subject to the following observations :—

In the main part of the recommendations of the Report I entirely concur, more pecially in those which have for their object to increase the efficiency of the power the Executive Government to restrain attempted violations of the neutrality of the untry.

* Mr. C. S. A. Abbott, of the Foreign Office, was attached to the Commission and in attendance at the etings.

The portions of the Report with respect to the policy of which I entertain considerable doubt are those parts of Resolution II., § b, and Resolution III., § a, the first of which extends the punitive power of the Law, and the second the preventive authority of the Executive, to the *building* of ships, apart from the question of their arming or despatch from the realm.

My apprehension is lest such an extension of the Law should unnecessarily—and if unnecessarily then unwisely—interfere with the shipbuilding trade of the country. It is needless to enlarge on the capital importance of that trade. As a commercial question it is one of the greatest consequence. It is, perhaps, the trade in which alone Great Britain still retains an unrivalled superiority. Everything which tends unnecessarily to hamper or embarrass it must be regarded with suspicion and adopted with caution. It is not of course argued that the interests of a trade, however valuable, should not yield to considerations of imperial necessity, and of international obligation, if there be such an obligation. But this particular branch of trade has a special national value which belongs to hardly any other. Upon it depend in no small degree those naval resources which constitute the main defence of the realm. I believe it is the fact that at the present moment by far the greater proportion of the existing iron-clad navy of Great Britain has been constructed in the yards of private shipbuilders. These private yards have been created and are maintained at no expense to the nation by the custom of foreign states. Most of the powers of Europe rely for their naval construction on the private yards of English shipbuilders. In this respect, therefore, apart from the commercial question, the nature of this trade involves public consequences of the utmost political importance. The monopoly of the construction of the iron-clad navies of the world has become a new and gigantic arm of our maritime superiority. England has become, and is daily still more becoming, the naval dockyard of Europe. One effect of discouraging this trade must be either that foreign Powers will construct for themselves, or else that some other nation whose restrictions are less rigid and whose trade is more free shall construct for them. Either alternative will deprive Great Britain of a great and special national advantage, which she now enjoys owing to her manufacturing skill and her peculiar resources in coal and iron. If England should unhappily be engaged in an European war we should lose the incalculable benefit of the control we now possess over the naval reserves of Europe. All these reservoirs of naval construction which the demands of foreign governments at present support in this country, can now in case of need be diverted from the foreign supply and be made immediately available for our own defence. If this trade is discouraged and possibly destroyed, the consequences are obvious. Foreign governments must build for themselves the vessels we now build for them. They will, therefore, be independent of this country in a manner which they now are not. Or they will build elsewhere, and the country to which they resort will then acquire the advantage we shall lose. This will be the first result. But the indirect effect on our own resources will be equally serious. At present, in time of peace, we are able to limit ourselves to comparatively moderate, though still enormously expensive, public establishments, because we know that in time of war the private yards will supplement our resources to an almost unlimited extent. But, if this private trade should cease or be seriously diminished, we must keep up constantly in time of peace such establishments as will be adequate to our utmost wants in time of war. The whole reserve of constructing power which we now possess in the private yards must be supplied by the public establishments. And consequently all that expenditure in plant, machinery, and the maintenance of skilled workmen, which is now defrayed by the custom of the foreigner in the private yards must in future be permanently sustained out of the public taxation. Few people conversant with the subject will dispute that if the yards which now manufacture iron-clads for the world were abolished, the navy estimates must be largely increased in order to establish and keep on foot equal means of construction in the public dockyards. We have a dozen private yards in the country which could in a limited time turn out vessels as powerful as any in the English navy, and which have in fact constructed many of the best ships we possess. Relying on this reserve of producing power we are able to economise our resources and to diminish our stock. But if these establishments cease we must always be prepared to supply their place at a far greater cost to the country. It is also deserving of consideration that the competition of these private yards among one another and with the Government dockyards, keeps up probably a higher standard of excellence than could be obtained by mere official supervision.

It will, therefore, be seen that the question is by no means one of the interest of private shipbuilders, but does in fact involve a great question of national resource and public economy.

It is worthy of remark that when in the year 1817 the Congress of the United States

were called upon to alter and amend their Foreign Enlistment Act, the Bill as reported by the Committee of Foreign Affairs in the House of Representatives bore the following title:

"A Bill *to prevent citizens of the United States from selling vessels of war to the citizens or subjects of any foreign power*, and more effectually to prevent the arming and equipping vessels of war in the ports of the United States, intended to be used against nations in amity with the United States."

By the first section, "if any citizen of the United States . . . . shall fit out and arm . . . . any private ship or vessel of war, *to sell* the said vessel or *contract for the sale* of said vessel, *to be delivered in the United States or elsewhere to the purchaser*, with intent . . . . to cruise or commit hostilities upon the subjects . . . . of any prince or state with whom the United States are at peace, such person shall be punished" with fine and imprisonment, &c.

This Bill was much discussed in the Senate, and in the end the first section above quoted was struck out, and the title of the statute altered accordingly. (These facts are stated on the authority of a letter of Mr. Bemis of Boston, published in 1866). The legislature of the United States have thus, it will be seen, deliberately declined to interfere with the commerce of that country in vessels of war. It may be worthy of consideration, having regard to these facts, whether the result of the proposed interference with the shipbuilding trade of England may not be to transfer to America the whole of the custom of foreign states.

But it will be argued that if the equipping, arming, and despatching of such vessels is to be prohibited, it is necessary on the principle *obsta principiis* to extend the prohibition to the earlier stages of the transaction. That reasoning does not carry conviction to my mind; the arming, equipping, and despatching are conspicuous acts directly and obviously connected with the belligerent intent. To build is nothing unless the vessel be armed and despatched; it is in these acts that the real breach of neutrality consists. The law should lay its hand on the immediate offence, and not be astute to search out its remote sources and springs. To attempt to do so involves consequences which will be politically difficult and dangerous.

The great advantage of the summary and extensive preventive powers which the present Report recommends should be conferred on the Executive to stay the despatch of vessels which may compromise our neutrality, is that they supply a reason which might justify us in mitigating the strictness of the penal code rather than an argument for augmenting its rigour. The notorious indisposition of juries to enforce such penalties creates a mischief which should be avoided. We may sustain the great inconvenience of making laws which we shall find it practically impossible to execute, because they exceed in severity the standard of public opinion. The present Report recommends the creation of an absolute, and I conceive a sufficient power to stop all vessels which ought to be stopped. The case of the Birkenhead rams, stopped by Earl Russell, is an instance of the exercise of the sort of power which it is the object of these recommendations to make more effectual and easy. As soon as reasonable grounds of suspicion arise, the power will be put in force. But assuming the vessel to be stopped, if there remains behind a statute which makes the original building penal, how are we to justify not proceeding to prosecute the builders after the vessel is stopped? If such a prosecution is not instituted the law is brought into contempt; if it is instituted the law will probably break down—results in either case to be greatly deprecated. When juries are called upon to inflict on their own countrymen, on behalf of foreigners, severe penalties for acts which are not punished but are held lawful in all other countries, is it not more than probable that popular sentiment will correct the severity of the law?

It must be remembered that in adding the word "building" to the penal part of the Act we are distinctly creating a *new crime*. We are making our own subjects liable to criminal penalties for acts which are clearly lawful by the law of nations, which are lawful by the law and practice of all nations, and which have hitherto been lawful by the law and practice of our own people. We shall have not only to enact a new crime which does not exist, but to create an opinion and conscience of criminality which it is more difficult to inspire.

The authors of the English Foreign Enlistment Act distinctly declined to carry back the offence to a period of the transaction which in no way partook of an offensive character and had no obvious or necessary connexion with an attitude of war. The American Government equally, after mature consideration, refused to adopt the alteration now proposed. They did so, upon principles of policy, by departing from which we may involve ourselves in inextricable difficulties, and probably not command on the part of other nations any corresponding reciprocity. It may be urged that whilst it is proposed

to confer these extended powers, a large discretion is left to the Government to determine how far they shall be put in operation. But as a fact, this discretion will be more nominal than real; and with the view of precluding international complaints, it will be absolutely null. Whatever power is conferred, in effect creates an obligation on the part of the Government to put it in force, and a responsibility on the part of the nation if any neglect to enforce it should occur. If the Government are authorized to interfere by prosecution and seizure at all stages of the building, then, at the first suggestion of any belligerent power they will be compelled, almost without discretion, to interfere, because, should they decline to do so, their responsibility and that of the nation will be involved, even by an error of judgment, in a case where the obligation is admitted. Thus we shall be made liable for acts for which at present no nation would hold us responsible. The reason why it has been considered inexpedient and impossible to enforce a prohibition of the exportation of munitions of war from the neutral territory is because to do so would involve a system of repression and *espionage* on the part of the neutral Government which would be wholly intolerable to the trade of its subjects. If the thing is forbidden it is the duty of the neutral Government to see that the prohibition is in fact enforced. But in order to enforce it we must establish on every occasion of war in foreign countries a sort of belligerent excise in the bosom of our own people. And this is precisely the evil in which we shall involve ourselves by undertaking to prohibit "building" with an unlawful intent. If we create and assume this duty we are bound to execute it, and in order to execute it we must ascertain at our own peril the intent and the future destination of every keel laid in the United Kingdom and even in our most distant possessions. If this is done honestly and efficiently it will place the whole ship-building trade under a supervision of a most odious and oppressive description, which would hardly be endured even for the security of our own interests, and certainly will not be tolerated for the advantage of foreign States.

There are those who reconcile themselves to such a course by supposing that in fact this new crime would never practically be prosecuted in its early stage. If so then to what purpose is it created? But in fact if it is made a crime the neutral Government must proceed against it in its earliest inception at the risk of being held responsible for what may happen in its further progress. There is an immense difference in this respect between the offence of arming and fitting out, which, especially in modern warfare, is a fact sufficiently obvious and patent, and may be easily detected in time to prevent the despatch of the vessel. But if all building with a certain intent is to be constituted a crime which it is part of the duty of the Government to repress, then there is not a keel laid, a bolt driven, or plank sawn in any yard in the country which may not at every instant be exposing the nation to a responsibility hitherto unknown.

The objections which forcibly strike me are these:—

(1.) We shall create a new duty which it will be difficult and probably impossible to execute.

(2.) In creating such a duty we shall incur a new responsibility by its non-execution.

(3.) The attempt to execute it will be odious to our own subjects, and the failure to execute it will be a just ground of complaint to foreign states.

(4.) We shall be placing the trade of our own country at an uncalled for disadvantage as compared with that of the rest of the world.

Either the creation of this new offence will or will not tend to embarrass and injure the ship-building trade of the country. If it will not (as some believe), it would be satisfactory that this should be clearly established. I confess if I were satisfied of this, my objections to the course proposed would be in a great measure removed. But if, as I believe, the necessity of a perpetual official supervision and interference would greatly hamper, and probably ultimately destroy, this branch of our commerce, that again is a point on which I think the nation has a right to expect that we should afford them the means of forming a sound judgment. It may be that for adequate objects we should be willing to sacrifice such a trade. But it is well that we should estimate the amount of the sacrifice, being as it is wholly gratuitous and without example in the case of other nations. I regret that the Commission have not taken evidence to show how far the proposed prohibition would in fact affect this particular trade and the general naval resources of the country. I venture to think that before any legislation on this matter is attempted, such an inquiry should be instituted. If the preventive powers of detention recommended in the Report are (as I believe) sufficient for all practical purposes and the performance of all legitimate duties, every argument of policy would dissuade us from carrying the law any further.

I entirely share the desire to make abundant provision that the duties of neutrality should be honestly, fully, and effectually carried out. But in creating new duties, which

do not at present exist, either in principle, precedent, or practice, it is worth while to consider whether by exaggerating the obligations of neutrality we are not creating a discouragement to its practice. We may end by making the duties of neutrality so irksome and intolerable, that on a mere calculation of expediency a prudent Government would prefer to go to war. And thus we may defeat the end we have in view by the means we adopt to attain it.

There is one condition of things for which it seems especially necessary to make provision. A contract may be made by a foreign government for the building in this country of an iron-clad in time of peace and without any contemplation of present war. Such vessels require many months for completion and their cost is enormous. The foreign government may have paid several hundred thousand pounds by instalments during the construction of the vessel, and the property in the incomplete vessel will have passed to the foreign government. What is to be done to such a vessel in case the contracting government is involved subsequently in war? Is the vessel to be forfeited and the builder to be prosecuted because he proceeds with a contract which was perfectly lawful when it was made? If so, what chance is there for the future that any foreign government will ever build in England, or indeed that any English builder will venture to undertake their contracts? This singular state of things might easily arise. The recent war between Austria and Prussia lasted less than two months; a vessel might have been contracted for by one of those governments with an English shipbuilder; the vessel might have been half finished before the war, and wholly completed after the war; in respect of the work done before the war and after the war, *i.e.* for the beginning and ending of the ship, the shipbuilder would be innocent; but in respect of the work done during the few weeks of the war, *i.e.* for the middle of the ship, he would be guilty of a misdemeanor and subject to fine and imprisonment. This may seem an extreme illustration, but it shows the necessity of providing some protection for contracts *bonâ fide* made and commenced in time of peace, unless it is intended wholly to prohibit the trade.

There is one other matter which I should gladly have seen embodied in the recommendations of the Report. A strong feeling has recently grown up against the recognition of belligerent commissions granted to vessels on the high seas, by which such vessels become at once raised to the position of lawful belligerent cruisers, though they start from no belligerent port, and, in fact, derive no support from the natural and legitimate naval resources of those on whose behalf they wage war. It seems to me that for all reasons it is wise to discourage such a practice. As there is no rule of international law which forbids such delivering of commissions on the high seas, we cannot of course refuse to recognize the title of such a cruiser to all the legitimate rights of war in places beyond our jurisdiction. But we are masters of our own actions and our own hospitality within the realm. Though, therefore, we cannot dispute the validity of such a commission on the high seas, or the legality of captures made by such a vessel, we may refuse to admit into our ports any vessel which has not received its commission in a port of its own country. By so doing we should be acting strictly within the principles of the law of nations, and our example would very probably be followed by other maritime states, and thus in the end tend to repress the practice altogether. For this purpose I should have been very glad if the commission had thought fit to recommend that in time of war no armed vessel engaged in hostilities should be admitted into any of our ports which should not hold a commission delivered to it in some port of military or naval equipment actually in the occupation of the government by which she is commissioned.

W. V. HARCOURT.

APPENDIX.

Appendix No. I.

BRITISH FOREIGN ENLISTMENT ACT.

59 George III. Cap. 69, July 3, 1819.

CAP. LXIX.—*An Act to prevent the Enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the Fitting-out or Equipping, in His Majesty's Dominions, Vessels for Warlike Purposes, without His Majesty's Licence.*

WHEREAS the enlistment or engagement of His Majesty's subjects to serve in war in foreign service, without His Majesty's licence, and the fitting-out and equipping and arming of vessels by His Majesty's subjects, without His Majesty's licence, for warlike operations in or against the dominions or territories of any foreign Prince, State, Potentate, or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any Province, or against the ships, goods, or merchandise of any foreign Prince, State, Potentate, or persons as aforesaid, or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this Kingdom: And whereas the laws in force are not sufficiently effectual for preventing the same; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, an Act passed in the ninth year of the reign of His late Majesty King George the Second, intituled "An "Act to prevent the listing His Majesty's subjects to "serve as soldiers without His Majesty's licence;" and also an Act passed in the twenty-ninth year of the reign of His said late Majesty King George the Second, intituled "An Act to prevent His Majesty's "subjects from serving as officers under the French "King, and for better enforcing an Act passed in the "ninth year of His present Majesty's reign to prevent "the enlisting His Majesty's subjects to serve as "soldiers without His Majesty's licence; and for "obliging such of His Majesty's subjects as shall accept "Commissions in the Scotch Brigade in the service of "the States-General of the United Provinces, to take "the oaths of allegiance and abjuration," and also an Act passed in Ireland in the eleventh year of the reign of His said late Majesty King George the Second, intituled "An Act for the more effectual pre-"venting the enlisting of His Majesty's subjects to "serve as soldiers in foreign service without His "Majesty's licence;" and also an Act passed in Ireland in the nineteenth year of the reign of His said late Majesty King George the Second, intituled "An "Act for the more effectual preventing His Majesty's "subjects from entering into foreign service, and for "publishing an Act of the seventh year of King Wil-"liam the Third, intituled 'An Act to prevent Foreign "Education,'" and all and every the clauses and provisions in the said several Acts contained, shall be and the same are hereby repealed.

II. And be it further declared and enacted, that if any natural-born subject of His Majesty, His heirs and successors, without the leave or licence of His Majesty, His heirs or successors, for that purpose first had and obtained under the sign-manual of His Majesty, His heirs or successors, or signified by Order in Council, or by proclamation of His Majesty, His heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of or for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or people, or of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any Province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of His Majesty shall, without such leave or license as aforesaid, accept, or agree to take or accept, any commission, warrant or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself to serve as a sailor or marine, or to be employed or engaged, or shall serve in and on board any ship or vessel of war, or in and on board of any ship or vessel used or fitted out, or equipped, or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign Power, Prince, State, Potentate, Colony, Province, or part of any Province or people, or of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any Province or people; or if any natural-born subject of His Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go to any foreign State, Country, Colony, Province, or part of any Province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any Province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any country, Colony, Settlement, island, or place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under and in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of Government as aforesaid, or to go or to agree to go or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted.

III. Provided always, and be it enacted, that nothing in this Act contained shall extend or be construed to extend to render any person or persons

liable to any punishment or penalty under this Act, who at any time before the first day of August one thousand eight hundred and nineteen, within any part of the United Kingdom, or of the Islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the first day of November one thousand eight hundred and nineteen, in any part or place out of the United Kingdom, or of the said Islands, shall have taken or accepted, or agreed to take or accept any military commission, or shall have otherwise enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a soldier, or shall have served, or having so served, shall, after the said first day of August one thousand eight hundred and nineteen, continue to serve in any warlike or military operation either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept any commission, warrant, or appointment as an officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor or marine, or shall have been employed or engaged, or shall have served, or or having so served shall, after the said first day of August, continue to serve in and on board of any ship or vessel of war, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged, or contracted or agreed to go, or shall have gone to, or having so gone to shall, after the said first day of August, continue in any foreign State, country, Colony, Province, or part of a Province, or to or in any place beyond the seas, unless such person or persons shall embark at or proceed from some port or place within the United Kingdom, or the Islands of Jersey, Guernsey, Alderney, or Sark, with intent to serve as an officer, soldier, sailor, or marine, contrary to the provisions of this Act, after the said first day of August, or shall embark or proceed from some port or place out of the United Kingdom, or the Islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said first day of November, or who shall, before the passing of this Act, and within the said United Kingdom, or the said Islands, on or before the first day of November one thousand eight hundred and nineteen, in any port or place out of the said United Kingdom, or the said Islands, have hired, retained, engaged, or procured, or attempted or endeavoured to hire, retain, engage, or procure, any person or persons whatever to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid as an officer, soldier, sailor, or marine, either in land or sea service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged, or employed contrary to the prohibitions respectively in this Act contained, anything in this Act contained to the contrary in anywise notwithstanding; but that all and every such persons and person shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person or persons was or were liable and subject to before the passing of this Act, and as such person or persons would have been in, and been liable and subject to, in case this Act and the said recited Acts by this Act repealed had not been passed or made.

IV. And be it further enacted, that it shall and may be lawful for any Justice of the Peace residing at or near to any port or place within the United Kingdom of Great Britain and Ireland, where any offence made punishable by this Act as a misdemeanour shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such Justice, or any Justice of the Peace; and it shall be lawful for the Justice of the Peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said Justice, to appear and answer to any information or indictment to be preferred against him, according to law, for the said offence; and that all such offences which shall be committed within that part of the United Kingdom called England, shall and may be proceeded and tried in His Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster, or at the assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and that all such offences which shall be committed within that part of the United Kingdom called Ireland, shall and may be prosecuted in His Majesty's Court of King's Bench at Dublin, and the venue be laid at Dublin, or at any assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and all such offences as shall be committed in Scotland shall and may be prosecuted in the Court of Justiciary in Scotland, or any other Court competent to try criminal offences committed within the county, shire, or stewartry within which such offence was committed; and where any offence made punishable by this Act as a misdemeanour shall be committed out of the said United Kingdom, it shall be lawful for any Justice of the Peace residing near to the port or place where such offence shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such Justice, or any other Justice of the Peace for such place; and it shall be lawful for the Justice of the Peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offence in the Superior Court, competent to try and having jurisdiction to try criminal offences committed in such port or place; and all such offences committed at any place out of the said United Kingdom shall and may be prosecuted and tried in any Superior Court of His Majesty's dominions competent to try and having jurisdiction to try criminal offences committed at the place where such offence shall be committed.

V. And be it further enacted, that in case any ship or vessel, in any port or place within His Majesty's dominions, shall have on board any such person or persons who shall have been enlisted or entered to serve, or shall have engaged, or agreed, or been procured to enlist, or enter, or serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any foreign Prince, State, or Potentate, Colony, Province, or part of any Province or people, or of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign Colony, Province, or part of any Province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this Act, it shall be lawful for any of the principal officers of His Majesty's Customs where any such officer of the Customs shall be, and in any part of His Majesty's dominions in which there are no officers of His Majesty's Customs, for any Governor, or persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorized and empowered to administer, that such person or persons as aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea on her voyage with such persons as aforesaid on board: Provided nevertheless, that no principal officer, Governor, or person shall act as aforesaid upon such information upon oath as aforesaid unless the party so informing shall not only have deposed in such information that the person or persons on board

such ship or vessel hath or have been enlisted or entered to serve, or hath or have engaged, or agreed, or been procured to enlist, or enter, or serve, or is or are departing as aforesaid for the purpose and with the intent of enlisting, or entering to serve, or to be employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such information, upon oath, the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such information upon oath; and that all and every person and persons convicted of wilfully false swearing in any such information upon oath, shall be deemed guilty of and suffer the penalties on persons convicted of wilful and corrupt perjury.

VI. And be it further enacted, that if any master, or other person having or taking the charge or command of any ship or vessel, in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, shall knowingly and willingly take on board, or if such master or other person having the command of any such ship or vessel, or any owner or owners of any such ship or vessel, shall knowingly engage to take on board any person or persons who shall have been enlisted or entered to serve, or shall have engaged, or agreed, or been procured to enlist, or enter, or serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any naval or military service, contrary to the provisions of this Act, such master, or owner, or other person as aforesaid shall forfeit and pay the sum of fifty pounds for each and every such person so taken or engaged to be taken on board; and, moreover, every such ship or vessel so having on board, conveying, carrying, or transporting any such person or persons, shall and may be seized and detained by the Collector, Comptroller, Surveyor, or other officer of the Customs, until such penalty or penalties shall be satisfied and paid, or until such master or person, or the owner or owners of such ship or vessel, shall give good and sufficient bail, by recognizance before one of His Majesty's Justices of the Peace, for the payment of such penalty or penalties.

VII. And be it further enacted, that if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign Prince, State, or Potentate, or of any foreign Colony, Province, or part of any Province or people, or of any person or persons exercising or assuming to exercise any powers of Government in or over any foreign State, Colony, Province, or part of any Province or people, as a transport or store ship, or with intent to cruise or commit hostilities against any Prince, State, or Potentate, or against the subjects or citizens of any Prince, State, or Potentate, or against the persons exercising or assuming to exercise the powers of Government in any Colony, Province, or part of any Province or country, or against the inhabitants of any foreign Colony, Province, or part of any Province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any Settlement, Colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture together with all the materials, arms, ammunition, and stores which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's Customs or Excise, or any officer of His Majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise, or the laws of trade and navigation, to seize such ships and vessels as aforesaid, and in such places and in such manner in which the officers of His Majesty's Customs or Excise and the officers of His Majesty's navy are empowered respectively to make seizures under the laws of Customs and Excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned, for any breach of the laws made for the protection of the revenues of Customs and Excise, or of the laws of trade and navigation.

VIII. And be it further enacted, that if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruizer, or other armed vessel which at the time of her arrival in any part of the United Kingdom or any of His Majesty's dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign Prince, State, or Potentate, or of any person or person exercising or assuming to exercise any powers of Government in or over any Colony, Province, or part of any Province or people belonging to the subjects of any such Prince, State, or Potentate, or to the inhabitants of any Colony, Province, or part of any Province or country under the control of any person or persons so exercising or assuming to exercise the powers of Government, every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted.

IX. And be it further enacted, that offences made punishable by the provisions of this Act, committed out of the United Kingdom, may be prosecuted and tried in His Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminister, in the county of Middlesex.

X. And be it further enacted, that any penalty or forfeiture inflicted by this Act may be prosecuted, sued for, and recovered, by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at Westminister or Dublin, or in the Court of Exchequer, or in the Court of Session in Scotland, in the name of His Majesty's Attorney-General for England or Ireland, or His Majesty's Advocate for Scotland respectively, or in the name of any person or persons whatsoever; wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and in every action or suit the person against whom judgment shall be given for any penalty or forfeiture under this Act shall pay double costs of suit; and every such action or suit shall and may be brought at any time within twelve months after the offence committed, and not afterwards; and one moiety of every penalty to be recovered by virtue of this Act shall go and be applied to His Majesty, his heirs or successors, and the other

moiety to the use of such person or persons as shall first sue for the same, after deducting the charges of prosecution from the whole.

XI. And be it further enacted, that if any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons for any thing done in pursuance of this Act, all rules and regulations, privileges and protections, as to maintaining or defending any suit or action, and pleading therein, or any costs thereon, in relation to any acts, matters, or things done, or that may be done by any officer of Customs or Excise, or by any officer of His Majesty's navy, under any Act of Parliament in force on or immediately before the passing of this Act, for the protection of the revenues of Customs and Excise, or prevention of smuggling, shall apply and be in full force in any such action or suit as shall be brought for anything done in pursuance of this Act, in as full and ample a manner to all intents and purposes as if the same privileges and protections were repeated and re-enacted in this Act.

XII. Provided always, and be it further enacted that nothing in this Act contained shall extend, or be construed to extend, to subject to any penalty any person who shall enter into the military service of any Prince, State, or Potentate in Asia, with leave or licence, signified in the usual manner, from the Governor-General in Council, or Vice-President in Council, of Fort William in Bengal, or in conformity with any orders or regulations issued or sanctioned by such Governor-General or Vice-President in Council.

Appendix No. II.

UNITED STATES FOREIGN ENLISTMENT ACT.

Fifteenth Congress. Sess. 1, ch. 8, April 20, 1818.

Chap. LXXXVIII.—*An Act in addition to the "Act for the Punishment of certain Crimes against the United States," and to repeal the Acts therein mentioned.**

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign Prince, State, Colony, district, or people, in war, by land or by sea, against any Prince, State, Colony, district, or people, with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sect. 2. And be it further enacted, That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign Prince, State, Colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: Provided, that this Act shall not be construed to extend to any subject or citizen of any foreign Prince, State, Colony, district, or people, who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States, was fitted and equipped as such, enter and enlist himself, or hire or retain another subject or citizen of the same foreign Prince, State, Colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign Prince, State, Colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign Prince, State, Colony, district, or people.

Sect. 3. And be it further enacted, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign Prince or State, or of any Colony, district, or people, to cruize or commit hostilities against the subjects, citizens, or property of any foreign Prince or State, or of any Colony, district, or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be guilty of a high misdemeanour, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Sect. 4. And be it further enacted, That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruize, or commit hostilities, upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such persons so offending shall be deemed guilty of a high misdemeanour, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offence, if committed within the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Sect. 5. And be it further enacted, That if any persons shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the force of any ship of war, cruizer, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruizer, or armed vessel, in the service of any foreign Prince or State, or of any Colony, district, or people, or belonging to the subjects or citizens of any such Prince or State, Colony, district, or people, the same being at war with any foreign Prince or State, or of any Colony, district, or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war, every person so offending shall be deemed guilty of a high misdemeanour, shall be fined not more than one thousand dollars, and be imprisoned not more than one year.

Sect. 6. And be it further enacted, That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace, every person so offending

* "An Act for the Punishment of certain Crimes against the United States," April 30, 1790, ch. 9. Act of March 3, 1817, ch. 58.

hall be deemed guilty of a high misdemeanour, and hall be fined not exceeding three thousand dollars, nd be imprisoned not more than one year.

Sect. 7. And be it further enacted, That the District Courts shall take cognizance of complaints, by whomoever instituted, in cases of captures made within the vaters of the United States, or within a marine league f the coasts or shores thereof.

Sect. 8. And be it further enacted, That in every ase in which a vessel shall be fitted out and armed, or ttempted to be fitted out and armed, or in which the orce of any vessel of war, cruizer, or other armed essel, shall be increased or augmented, or in which ny military expedition or enterprise shall be begun r set on foot, contrary to the provisions and prohibiions of this Act; and in every case of the capture of ship or vessel within the jurisdiction or protection of he United States as before defined, and in every case n which any process issuing out of any Court of the Jnited States shall be disobeyed or resisted by any erson or persons having the custody of any vessel of var, cruizer, or other armed vessel of any foreign Prince or State, or of any Colony, district, or people, r of any subjects or citizens of any foreign Prince or State, or of any Colony, district, or people, in every ase it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the and or naval forces of the United States, or of the nilitia thereof, for the purpose of taking possession of nd detaining any such ship or vessel, with her prize r prizes, if any, in order to the execution of the proibitions and penalties of this Act, and to the restoring he prize or prizes in the cases in which restoration hall have been adjudged, and also for the purpose of reventing the carrying on any such expedition or nterprise from the territories or jurisdiction of the Jnited States against the territories or dominions of ny foreign Prince or State, or of any Colony, district, r people, with whom the United States are at peace.

Sect. 9. And be it further enacted, That it shall be awful for the President of the United States, or such erson as he shall empower for that purpose, to employ uch part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary o compel any foreign ship or vessel to depart the Jnited States in all cases in which by the law of ations or the Treaties of the United States, they ught not to remain within the United States.

Sect. 10. And be it further enacted, That the owners r consignees of every armed ship or vessel sailing out f the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruize or commit hostilities against the subjects, citizens, or property, of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace.

Sect. 11. And be it further enacted, That the Collectors of the Customs be, and they are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruize or commit hostilities upon the subjects, citizens, or property of any foreign State, or of any Colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this Act.

Sect. 12. And be it further enacted, That the Act passed on the fifth day of June One thousand seven hundred and ninety-four, entitled "An Act in addition "to the Act for the punishment of certain crimes "against the United States," continued in force, for a limited time, by the Act of the second of March One thousand seven hundred and ninety-seven, and perpetuated by the Act passed on the twenty-fourth of April One thousand eight hundred, and the Act passed on the fourteenth day of June One thousand seven hundred and ninety-seven, entitled "An Act to prevent "citizens of the United States from privateering "against nations in amity with, or against the citizens "of, the United States," and the Act passed the third day of March One thousand eight hundred and seventeen, entitled "An Act more effectually to preserve the neutral relations of the United States," be, and the same are hereby severally repealed: Provided nevertheless, that persons having heretofore offended against any of the Acts aforesaid may be prosecuted, convicted, and punished as if the same were not repealed; and no forfeiture heretofore incurred by a violation of any of the Acts aforesaid shall be affected by such repeal.

Sect. 13. And be it further enacted, That nothing in the foregoing Act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States.

Appendix No. III.

MEMORANDUM BY MR. ABBOTT.

The Foreign Enlistment Act.
(59 Geo. III., c. 69, July 3, 1819.)

The Foreign Enlistment Acts of Great Britain and the United States, the circumstances under which they were passed, as well as the principles of neutrality involved in them, are so similar that a consideration of the British must necessarily be prefaced by an account of the history of the American Act.*

The United States Foreign Enlistment Act.

When, after the execution of Louis the XVIth, the French National Convention declared war, on the 1st of February 1793, against England and Holland, one of their first acts was to appoint a Representative to proceed to the United States to solicit the support of the sister Republic, and to reclaim the privileges to which they considered France to be entitled under the two Treaties of the 6th of February 1778.†

The first of those Treaties was a Treaty of Friendship and Commerce, and contained the following Articles:—

"Article XVII. Les vaisseaux de guerre de Sa Majesté Très Chrétienne et ceux des Etats-Unis, de même que ceux que leurs sujets auront armés en guerre, pourront en toute liberté conduire où bon leur semblera, les prises qu'ils auront faites sur les ennemis, sans être obligés à aucuns droits, soit des Srs. Amiraux ou de l'Amirauté ou d'aucuns autres, sans qu'aussi les dits vaisseaux ou les dites prises, entrant dans les havres ou ports de Sa Majesté Très Chrétienne ou des Etats-Unis puissent être arrêtés ou saisis, ni que les officiers des lieux puissent prendre connaissance de la validité des dites prises, lesquelles pourront sortir et être conduites franchement et en toute liberté aux lieux portés par les commissions dont les Capitaines des dits vaisseaux seront obligés de faire apparoir; et au contraire ne sera donné asyle ni retraite dans leurs ports ou havres, à ceux qui auront fait des prises sur les sujets de Sa Majesté ou des Etatas-Unis, et s'ils sont forcés d'y entrer par tempête ou péril de la mer, on les fera sortir le plutôt qu'il sera possible."

"Article XXII. Il ne sera permis à aucun corsaire étranger, non appartenant à quelque sujet de Sa Majesté Très Chrétienne ou à un citoyen des dits Etats-Unis, lequel aura une commission de la part

* Fifteenth Congress, sess. 1, chap. 8, April 20, 1818.
† Signed by Benjamin Franklin.

d'un Prince ou d'une Puissance en guerre avec l'une des deux nations, d'armer leurs vaisseaux dans les ports de l'une des deux parties, ni d'y vendre les prises qu'il aura faites, ni décharger en autre manière quelconque les vaisseaux, marchandises, ou aucune partie de leur cargaison. Il ne sera même pas permis d'acheter d'autres vivres que ceux qui lui seront nécessaires pour se rendre dans le port le plus voisin du Prince ou de l'Etat dont il tient commission."

The other Treaty, styled "Traité d'Alliance Eventuelle et Défensive," provided (Article XI.) for the mutual guarantee of the French and United States possessions in North America, "le tout comme la "possession sera fixée et assurée aux dits Etats, au "moment de la cessation de la guerre qu'ils ont "actuellement contre l'Angletrre;" and Article XII: "A l'effet de fixer plus précisement le sens et l'appli- "cation de l'Article précédent, les Parties Contrac- "tantes déclarent que, dans le cas d'une rupture entre "la France et l'Angleterre, la garantie réciproque "stipulée dans le dit Article sortira son plein et "entier effet, dès le moment qu'une telle guerre "viendra à éclater. Et si une telle rupture n'a pas "lieu les obligations mutuelles des dites garanties ne "commenceront pas avant le moment que la cessation "de la présente guerre entre les Etats-Unis et "l'Angleterre aura fixé ces possessions d'une manière "certaine."

The National Convention assumed that under these stipulations they might claim the exclusive right to arm and commission privateers within American ports, to bring into them their prizes, to cause the prizes thus brought in to be condemned by French Consuls and sold, and even to capture enemy's vessels within the limits of the maritime jurisdiction of the United States. At least such were the pretensions of their Envoy, Monsieur, or as he styled himself Citizen, Genet, a Girondist of the most exaggerated type, whose avowed object was to excite the people of the United States to a war with Great Britain.

ucker's "History of the United States," Ep 1856, vol. i. pages 504 to 517

On the other hand, Washington, then entering on his second term of office as President, was determined to preserve the neutrality of his country, and immediately on receiving intelligence of the outbreak of war hastened from Mount Vernon to Philadelphia, and summoned his Cabinet to consider:—

1. Whether a Proclamation of Neutrality should be issued.
2. Whether a minister should be received from the party then in power in France.
3. Whether the United States were bound by the guarantee in the Treaty of 1778.

The Cabinet differed on the second and third points, but were unanimous in the favour of the issue of a Proclamation.

On referring to the history of the United States for this period, it will be seen that the President was was placed in a position which made it very difficult for him to carry out the policy of neutrality which he had decided upon.

Tucker's "History of the United States." Guizot. Washington.

The sympathies of the people of the United States were warmly engaged on behalf of France. The hostility against England generated during the War of Independence was kept alive and fostered by the excesses committed by the frontier Indians, who, it was alleged, were encouraged by the British authorities; disputes had been raised as to the interpretation of the Treaty of 1783; American seamen were pressed for the British navy; the English Government were said to exercise the right of search at sea, and to interfere with American merchant-vessels in an arbitrary and unfriendly manner. Besides the difficulties arising from these and other similar complaints against the British Government, which rendered any measure which might be supposed to be favourable to England in the highest degree unpopular, the Cabinet of the President was divided into factions headed respectively by Thomas Jefferson, Secretary for Foreign Affairs, and Alexander Hamilton, Secretary of the Treasury. The former, who had served from 1782 to 1789 as Minister at Paris, was at the head of the party who advocated the rights of separate Government in the several States. He was a Republican of extreme views, and favoured the French cause. The latter, the leader of the Federal or Centralization party, was inclined towards the constitutional system of England, with which country he consequently in some degree sympathized.

It is necessary to take some notice of these obstacles to the President's policy of neutrality, as explaining the subsequent proceedings of the United States Government. The nation at large and two of the Cabinet, Jefferson and the Attorney-General, Edmund Randulph, were for affording assistance to France in the first instance, and even for engaging eventually in the war. Washington, with Hamilton and Henry Knox, the Secretary for War, advocated a strict neutrality, and were supported in their views by the Federalist party. Washington's strength of character overcame the opposition of the French party, and he succeeded in commencing and maintaining that policy of non-intervention in European affairs which has since been consistently followed by his country up to the present time.

The Proclamation of Neutrality was issued on the 22nd of April 1793, and was as follows:

"Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, on the one part, and France on the other part; and the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the belligerent Powers:

"I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those Powers respectively, and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever which may in any manner tend to contravene such disposition.

"And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further, that I have given instructions to those officers to whom it belongs to cause prosecutions to be instituted against all persons who shall, within the cognizance of the Courts of the United States, violate the law of nations with respect to the Powers at war, or any of them.

(Signed) "WASHINGTON.

"Philadelphia, April 22, 1793.

"By the President,

(Signed) "TH. JEFFERSON."

In the meanwhile, M. Genet had sailed from France provided with blank commissions or letters of marque for distribution in the ports of the United States. He arrived at Charleston on the 8th of April; but the intelligence of his landing was not received by the United States Government at Philadelphia until the day on which the Proclamation was issued. He at once organized a system of privateering, and within a week commissioned four vessels, the "Republican," the "Sans Culotte," the "Anti-George," and the "Citizen Genet." He also authorized the French Consuls in the United States to hold Courts of Vice-Admiralty on any vessels their cruizers might capture, to condemn them and sell the prizes. Instead of proceeding by sea to Philadelphia, M. Genet made a triumphant progress by land, haranguing the people, instituting "bonnet rouge" clubs, and endeavouring to excite the citizens of the towns through which he passed to afford active aid to the French Republic, in spite of the President's declaration of neutrality.

Mr. Hammond lost no time in remonstrating against these proceedings, and on the 8th of May addressed the following note to Mr. Jefferson.

The undersigned, Her Britannic Majesty's Minister
enipotentiary to the United States of America, has
honour of informing the Secretary of State that he
received intelligence from His Majesty's Consul
Charlestown, South Carolina, that two privateers
ve been fitted out from that port under French
mmissions. They carry six small guns, and are
igated by 40 or 50 men, who are for the most part
zens of the United States. One of these privateers
the harbour of Charlestown on the 18th ultimo, and
other was on the 22nd ultimo ready to depart.

'The undersigned does not deem it necessary to
er into any reasoning upon these facts, as he con-
es them to be breaches of that neutrality which
United States profess to observe, and direct con-
ventions of the Proclamation which the President
ued upon the 22nd of last month. Under this
pression he doubts not that the Executive Govern-
nt of the United States will pursue such measures
to its wisdom may appear the best calculated for
ressing such practices in future and for restoring
their rightful owners any captures which these
rticular privateers may attempt to bring into any of
ports of the United States."

Mr. Hammond at the same time forwarded to Mr.
fferson three other notes complaining respectively
the illegal prize court established by the French
nsul at Charleston, of the intended shipment of arms
d munitions of war for France from American
rts, and of the seizure of the British Barque
Grange" by the French frigate "Abondance" in the
laware River.

n acknowledging the receipt of these communi-
ions, Mr. Jefferson observed, with reference to the
port of arms, that "American citizens have always
en free to make, vend, and export arms; it
the constant occupation and livelihood of some
them; to suppress their callings, the only
ans perhaps of their subsistence, because a war
ists in foreign and distant countries in which
have no concern, would scarcely be expected;
would be hard in principle and impossible in practice;
law of nations, therefore, respecting the rights
those at peace, does not require from them such
internal derangement of their occupations; it is
isfied with the external penalty pronounced in the
esident's Proclamation, that of confiscation of such
tion of those arms as shall fall into the hands of
of the belligerent powers on the way to the ports
their enemies; to this penalty American citizens
warned that they will be abandoned, and that
en private contraventions may work no inequality
ween the parties at war, the benefit of them will
left equally free and open to all."

Mr. Jefferson also declared that the United States
vernment 'condemned in the highest degree the
onduct of any of its citizens who might personally
ngage in committing hostilities at sea against any
f the nations who were parties to the war, and that
would exert all the means *with which the laws
nd Constitution armed them* to discover such as
ffended therein, and would bring them to condign
unishment,' and that 'the practice of commis-
ioning, equipping, and manning vessels in American
orts to cruize on any of the belligerent parties was
qually and entirely disapproved, and that the
Government would take effectual measures to prevent
repetition of it.'" He likewise promised that the
vernment would take measures for the liberation
the crew of the "Grange" and restitution of the
ssel and cargo, and concurred with Mr. Hammond
t the establishment of a French Prize Court at
arleston was "not warranted by the usage of
nations nor by the stipulations existing between
the United States and France."

Mr. Hammond's note requesting the restoration of
prizes was reserved for further consideration.

M. Genet reached Philadelphia on the 16th of May
93. The previous day a note had been addressed to
predecessor, M. Ternant, by Mr. Jefferson, recount-
the claims of violations of neutrality preferred by
the British Minister, Mr. George Hammond, and calling his attention to the seizure of the English barque "Grange" by the French frigate "Abondance" in the Delaware River. Attached to this note is a Report of Attorney-General Randolph on the general question of maritime jurisdiction. M. Genet restored the vessel. The correspondence continued until the 5th of June, when the final decision of the United States Government was conveyed to M. Genet and Mr. Hammond in the following official notes:

Mr. Jefferson to M. Genet.

Jefferson's Works, vol. iii. p. 571.

Sir, Philadelphia, June 5th, 1793.

In my letter of May the 15th to Mr. Ternant, your predecessor, after stating the answer which had been given to the several memorials of the British Minister of May the 8th, it was observed that a part still remained unanswered of that which respected the fitting out of armed vessels in Charleston, to cruise against nations with whom we were at peace.

In a conversation which I had afterwards the honour of holding with you, I observed that one of these armed vessels, the citizen Genet, had come into this port with a prize; that the President had thereupon taken the case into further consideration, and after mature consultation and deliberation, was of opinion, that the arming and equipping vessels in the ports of the United States to cruise against nations with whom they are at peace, was incompatible with the Territorial Sovereignty of the United States, that it made them instrumental to the annoyance of those nations, and thereby tended to compromise their peace; and that he thought it necessary as an evidence of good faith to them, as well as a proper reparation to the Sovereignty of the country that the armed vessels of this description should depart from the ports of the United States.

The letter of the 27th ultimo, with which you have honoured me, has been laid before the President and that part of it which contains your observations on this subject has been particularly attended to. The respect due to whatever comes from your friendship for the French nation and justice to all, have induced him to re-examine the subject and particularly to give your representations thereon, the consideration they deservedly claim. After fully weighing again, however, all the principles and circumstances of the case, the result appears still to be, that it is the right of every nation to prohibit acts of sovereignty from being exercised by any other within its limits; and the duty of a neutral to prohibit such as would injure one of the warring powers, that the granting military commissions within the United States by any other authority than their own, is an infringement on their sovereignty, and particularly so when granted to their own citizens to lead them to act contrary to the duties they owe to their own country; that the departure of vessels thus illegally equipped from the parts of the United States, will be but an acknowledgment of respect analogous to the breach of it, while it is necessary on their part, as an evidence of their faithful neutrality. On these considerations, sir, the President thinks that the United States owe it to themselves and to the nations in their friendship, to expect this out of reparation on the part of vessels marked in their very equipment with offence to the laws of the land, of which the law of nations makes an integral part.

The expressions of friendly sentiment which we have already had the satisfaction of receiving from you, leave no room to doubt that the conclusion of the President being thus made known to you, these vessels will be permitted to give no further umbrage by their presence in the ports of the United States.

I have, &c.

T. Jefferson.

Mr. Jefferson to Mr. Hammond.

Sir, Philadelphia, June 5. 1793.

In the letter which I had the honour of writing you on the 15th of May, in answer to your several Memorials of the 8th of that month, I mentioned that

the President reserved for further consideration a part of the one which related to the equipment of two privateers in the port of Charleston. The part alluded to was that wherein you express your confidence that the Executive Government of the United States would pursue measures for repressing such practices in future, and for restoring to their rightful owners any captures which such privateers might bring into the ports of the United States.

The President, after a full investigation of this subject and the most mature consideration, has charged me to communicate to you that the first part of this application is found to be just, and that effectual measures are taken for preventing repetitions of the act therein complained of; but that the latter part, desiring restitution of the prizes, is understood to be inconsistent with the rules which govern such cases, and would, therefore, be unjustifiable towards the other party.

The principal agents in this transaction were French citizens. Being within the United States at the moment a war broke out between their own and another country, they determined to go into its defence; they purchase, arm, and equip a vessel with their own money, man it themselves, receive a regular commission from their nation, depart out of the United States, and then commence hostilities by capturing a vessel. If under these circumstances the commission of the captors was valid, the property according to the laws of war was by the capture transferred to them, and it would be an aggression on their nation for the United States to rescue it from them, whether on the high seas or on coming into their ports. If the commission was not valid, and consequently the property not transferred by the laws of war to the captors, then the case would have been cognisable in our Courts of Admiralty, and the owners might have gone thither for redress. So that on neither supposition would the Executive be justifiable in interposing.

With respect to the United States, the transaction can in no wise be imputed to them. It was in the first moment of the war, in one of their most distant ports, before measures could be provided by the Government to meet all the cases which such a state of things was to produce, impossible to have been known, and therefore impossible to have been prevented by that Government.

The moment it was known the most energetic orders were sent to every State and port in the Union to prevent a repetition of the accident. On a suggestion that citizens of the United States had taken part in the act, one who was designated was instantly committed to prison for prosecution, one or two others have been since named and committed in like manner; and should it appear that there were still others, no measures will be spared to bring them to justice. The President has even gone further. He has required, as a reparation of their breach of respect to the United States, that the vessels so armed and equipped shall depart from our ports.

You will see, Sir, in these proceedings of the President unequivocal proofs of the line of strict right which he means to pursue. The measures now mentioned are taken in justice to the one party, the ulterior measure of seizing and restoring the prizes is declined in justice to the other, and the evil thus early arrested will be of very limited effect; perhaps, indeed, soon disappear altogether.

I have, &c.

(Signed) TH. JEFFERSON.

Tucker, vol. i, page 513.

Shortly afterwards a case occurred in which M. Genet openly defied the authority of the Government. An English letter of marque, the "Little Sarah," had been captured by a French frigate and sent into Philadelphia, where she was fitted out as a privateer under the name of the "Little Democrat." M. Genet was applied to to stop this vessel from sailing, but he refused to interfere, and said that force would be repelled by force. A detachment of 120 militia were sent to guard the vessel, but on M. Genet entering into an implied engagement that the vessel should not leave the river, they were withdrawn. The President then determined to submit to the Judges a series of questions upon the points at issue between the Government and M. Genet, and requested the latter to detain the "Little Democrat," the ships "Jane" and "William" in the Delaware, the "Citoyen Genet," and her two prizes, the "Lovely Lass" and "Prince William Henry," and the brig "Fanny" in the Chesapeake, until the opinion of the Judges could be ascertained. The "Little Democrat" sailed four or five days after this, while the Judges declined to answer the queries put by the Executive as out of the sphere of their judicial duties, which were limited to cases of legal controversy. The Cabinet accordingly decided to lay down certain rules to be observed towards belligerents in the ports of the United States. These rules were carefully framed in accordance with the received doctrines of international law, slightly modified by the Treaty between the United States and France, and were communicated to the collectors of customs with the following circular:

Instructions to the Collector of Customs.

Sir, Philadelphia, August 4, 1793.

It appearing that repeated contraventions of our Neutrality Laws have taken place in the ports of the United States, without having been discovered in time for prevention or remedy, I have it in command from the President to address to the collectors of the respective districts a particular instruction on the subject.

It is expected that the officers of Customs in each district will, in the course of their official functions have a vigilant eye upon whatever may be passing within the ports, harbours, creeks, inlets, and waters of such district, of a nature to contravene the Laws of Neutrality, and upon discovery of anything of the kind will give immediate notice to the Governor of the State, and to the attorney of the judicial district comprehending the district of the Customs within which any such contravention may happen.

To assist the judgment of the officers on this head I transmit herewith a schedule of rules concerning sundry particulars which have been adopted by the President, as deductions from the Laws of Neutrality established and received among nations. Whatever shall be contrary to these rules will, of course, be to be notified as above mentioned.

There are some points which, pursuant to our Treaties, and the determination of the Executive, I ought to notice to you.

If any vessel of the Powers at war with France should *bring or send* within your district a prize made of the subjects, people, or property of France, it is immediately to be notified to the Governor of the State, in order that measures may be taken, pursuant to the 17th Article of the Treaty with France, to oblige such vessel and her prize, or such prize, when sent in without the capturing vessel, to depart.

No privateer of any of the Powers at war with France, coming within a district of the United States, can, by the 22nd article of our Treaty with France, enjoy any other privilege than that of *purchasing such victuals as shall be necessary for her going to the next port of the Prince or State from which she has her commission.* If she should do anything beside this, it is immediately to be reported to the Governor, and the attorney of the district. You will observe by the rules transmitted, that the term privateer is understood not to extend to vessels armed for merchandise and war, commonly called with us *letters of marque*, nor, of course, to vessels of war in the immediate service of the Government of either of the Powers at war.

No armed vessel which has been or shall be *originally fitted out* in any port of the United States by either of the parties at war, is henceforth to have asylum in any district of the United States. If any such armed vessel shall appear within your district, she is immediately to be notified to the Governor and to the attorney of the district, which is also to be done in

pect to any prize that such armed vessel shall
ng or send in. At foot is a list of such armed ves-
s of the above description as have hitherto come to
knowledge of the Executive.

The purchasing within and exporting from the
ited States, *by way of merchandise*, articles com-
nly called contraband, being generally warlike in-
uments and military stores, is free to all the parties
war, and is not to be interfered with. If our own
zens undertake to carry them to any of the parties,
y will be abandoned to the penalties which the
s of war authorize.

You will be particularly careful to observe, and to
ify as directed in other instances, the case of any
zen of the United States who shall be found in the
vice of either of the parties at war.

In case any vessel shall be found in the act of con-
vening any of the rules or principles which are the
ground of this instruction, she is to be refused a
arance until she shall have complied with what the
vernor shall have decided in reference to her.
re, however, is to be taken in this, not unnecessarily
nreasonably to embarrass trade or to vex any of the
ties concerned.

In order that *contraventions* may be the better
ertained, it is desired that the officer who shall first
on board any vessel arriving within your district
ll make an accurate survey of her then condition as
military equipment to be forthwith reported to you :
l that, prior to her clearance, a like survey be
de, that any transgression of the rules laid down
y be ascertained

But, as the propriety of any such inspection of *a ves-
of war in the immediate survey of the Government*
a foreign nation is not without question in reference
the usage of nations, no attempt is to be made to
pect any such vessel till further orders on the point.

The President desires me to signify to you his
st particular expectation that the instructions con-
ned in this letter will be executed with the greatest
gilance, care, activity, and impartiality. Omissions
ll tend to expose the Government to serious imputa-
ns and suspicions, and proportionably to commit
e good faith and peace of the country, objects of too
ch importance not to engage every proper exertion
your zeal.

With consideration,
I am, sir, &c.
ALEXANDER HAMILTON.

" 1. The original arming and equipping of vessels
the ports of the United States by any of the
ligerent parties for military service, offensive or
fensive, is deemed unlawful.

" 2. Equipments of merchant vessels by either of
belligerent parties in the ports of the United
ates, purely for the accommodation of them as such,
deemed lawful.

" 3. Equipments in the ports of the United States
vessels of war in the immediate service of the
vernment of any of the belligerent parties, which,
lone to other vessels, would be of a doubtful nature,
being applicable either to commerce or war, are
emed lawful; except those which shall have made
ze of the subjects, people, or property of France,
ning with their prizes into the ports of the United
ates, pursuant to the XVIIth Article of our Treaty
Amity and Commerce with France.

" 4. Equipments in the ports of the United States,
any of the parties at war with France, of vessels
ed for merchandise and war, whether with or
thout commissions, which are doubtful in their
ture, as being applicable either to commerce or war,
deemed lawful, except those which shall have
de prize, &c.

" 5. Equipments of any of the vessels of France, in
ports of the United States, which are doubtful in
ir nature as being applicable to commerce or war,
deemed lawful.

" 6. Equipments of every kind, in the ports of
United States, of privateers of the Powers at war
ance, are deemed unlawful.

" 7. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful; except those stranded or wrecked, as mentioned in the XVIIIth Article of our Treaty with France, the XVIth of our Treaty with the United Netherlands, the XVIIIth of our Treaty with Prussia.

" 8. Vessels of either of the parties not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist their own subjects or citizens, not being inhabitants of the United States, except privateers of the Powers at war with France, and except those vessels which have made prizes, &c."

On the 7th of August Mr. Jefferson wrote to M. Genet, stating that the President had decided that compensation or restitution should be made in the case of vessels brought into United States ports as prizes by privateers fitted out in such ports since the 5th of June, and consequently called on him to restore these prizes, as otherwise the Government of France would be considered liable for the repayment of the compensation paid to the persons aggrieved. Mr. Jefferson adds, "that besides taking efficacious measures to prevent the future fitting out privateers in the ports of the United States, they will not give asylum therein to any which shall have been at any time so fitted out, and will cause restitution of all such prizes as shall be hereafter brought within their ports by any of the said privateers."

American State Papers, vol. i, page 167.

Mr. Hammond was also informed of this decision of the President.

MR. JEFFERSON to MR. HAMMOND.

Sir, Philadelphia, August 7th 1793.

A constant expectation of carrying into full effect the declaration of the President against permitting the armament of vessels within the ports of the United States to cruize on nations with which they are at peace, has hitherto prevented me giving you a final answer on the subject of such vessels and their prizes. Measures to this effect are still taking, and particularly for excluding from all further asylum in our ports the vessels so armed and for the restoration of the prizes the "Lively Lass," the "Prince William Henry," and the "Jane of Dublin," taken by them; and I am authorized in the meantime to assure you that should the measures for restoration fail in their effect, the President considers it as incumbent upon the United States to make compensation for the vessels.

MS. Inclosure in Mr. Hammond's despatch to Lord Grenville August 10, 1793.

I have, &c.
T. JEFFERSON.

The affair of the "Little Democrat," in which the Government was "thus insulted and set at defiance by M. Genet," determined them on asking for his recall; and the United States Minister at Paris was accordingly instructed, on the 16th of August, to represent to the French Government that if M. Genet persevered in his proceedings the United States Government would "be forced even to suspend his functions before a successor could arrive to continue them."

Mr. Jefferson to Mr. Morris, United States Minister at Paris, August 16, 1793.

American State Papers, vol. i, page 167.

M. Genet seems to have tried to test the neutrality of the United States Government on every point. He maintained the right of the French Government not only to issue commissions and to equip vessels, but also openly to man their privateers in American ports. Two seamen, named Henfield and Singletary, were arrested on board the "Citizen Genet" at Philadelphia, for having enlisted in the French service. M. Genet remonstrated in his usual bombastic style, demanding their immediate release. This was refused, and Henfield brought to trial. The jury, however, acquitted him on the plea of his having been ignorant of having committed an offence in taking service in a French privateer. M. Genet also engaged in an intrigue for the seizure of New Orleans by some malcontents in Kentucky. In short, he managed during the few months he remained the Representative of France to damage the interests of his country in every conceivable way; while the temperate re-

M. Genet to Mr. Jefferson; June 1, 1793.

American State Papers vol. i, page 151.

Tucker, vol. [illegible]

monstrances of the English Minister afforded a contrast to these exaggerated pretensions, and served to confirm the President in his policy of neutrality and to influence the Cabinet in favour of England.

MS. Inclosure in Mr. Hammond's despatch to Lord Grenville of the 17th of September 1793.

Certain prizes having been brought in by vessels fitted out after the 5th of June as well as those brought in by vessels fitted out before that date, of which restitution had already been refused, Mr. Hammond wrote on the 30th of August to Mr. Jefferson requesting to be informed of the precise intentions of the Government respecting the restoration of prizes.

Mr. Hammond says: "I understand that all captures "made subsequently to the 5th of June, and ante- "cedently to the 7th of August, by any vessel fitted "out, armed and equipped in the ports of the United "States are either to be restored to the captors, or a "compensation for their full value is to be paid to "their owners by the Government of the United "States, and that all prizes made by vessels of this "description subsequently to the 7th of August are to "be seized, and immediately restored by the Govern- "ment of the United States, or if the restitution "cannot be effected, a compensation for their full "value is to be paid in the same manner as in the "former case."

Mr. Jefferson replied on the 5th of September:—

Sir, Philadelphia, September 5, 1793.

I am honoured with yours of August 30. Mine of the 7th of that month assured you that measures were taken for excluding from all further asylum in our ports vessels armed in them to cruize on nations with which we are at peace, and for the restoration of the prizes the "Lovely Lass," "Prince William Henry," and the "Jane," of Dublin, and that should the measures for restitution fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels.

We are bound by our Treaties with three of the belligerent nations, by all the means in our power, to protect and defend their vessels and effects in our ports or waters, or on the seas near our shores, and to recover and restore the same to the right owners when taken from them. If all the means in our power are used, and fail in their effect, we are not bound by our Treaties with those nations to make compensation.

Though we have no similar Treaty with Great Britain, it was the opinion of the President that we should use towards that nation the same rule which, under this Article, was to govern us with the other nations, and even to extend it to captures made on the high seas, and brought into our ports, if done by vessels which had been armed within them.

Having, for particular reasons, forbore to use all the means in our power for the restitution of the three vessels mentioned in my letter of August 7, the President thought it incumbent on the United States to make compensation for them; and though nothing was said in that letter of other vessels taken under like circumstances, and brought in after the 5th of June, and before the date of that letter, yet, when the same forbearance had taken place, it was and is his opinion that compensation would be equally due.

As to prizes made under the same circumstances, and brought in after the date of that letter, the President determined that all the means in our power should be used for their restitution. If these fail, as we should not be bound by our Treaties to make compensation to the other Powers, in the analogous case, he did not mean to give an opinion that it ought to be done to Great Britain. But still, if any cases shall arise subsequent to that date, the circumstances of which shall place them on similar ground with those before it, the President would think compensation equally incumbent on the United States.

Instructions are given to the Governors of the different States to use all the means in their power for restoring prizes of this last description found within their ports. Though they will, of course, take measures to be informed of them, and the General Government has given them the aid of the Custom house officers for this purpose, yet you will be sensible of the imp tance of multiplying the channels of their informa as far as shall depend on yourself or any person un your direction, in order that the Governors may the means in their power for making restitut Without knowledge of the capture, they cannot res it. It will always be best to give the notice to th directly; but any information which you shall pleased to send to me also, at any time, shall be warded to them as quickly as distance will permit.

Hence you will perceive, Sir, that the Presid contemplates restitution or compensation in the c before the 7th of August, and after that date, resti tion, if it can be effected by any means in our pow and that it will be important that you should subst tiate the fact that such prizes are in our ports waters.

Your list of the privateers illicitly armed in ports is, I believe, correct.

With respect to losses by detention, waste, spo tion, sustained by vessels taken as before mentio between the dates of the 5th June and the 7th Aug it is proposed as a provisional measure that Collector of the Customs of the district, and British Consul, or any other person you please, s appoint persons to establish the value of the ve and cargo, at the time of her capture, and of arrival in the port into which she is brought, acc ing to their value in that port.

If this shall be agreeable to you, and you will pleased to signify it to me, with the names of prizes understood to be of this description, instructi will be given accordingly to the Collectors of Customs where the respective vessels are.

I have, &c.,

(Signed) TH. JEFFERSON

This letter was appended to the Treaty of the 19th November 1794.

The particular reasons referred to were the unw lingness of the United States' Government to opp the sailing of the French privateers by force.

The result of the publication of the Rules of the August was that the system of privateering generally speaking, suppressed, though cases seem have occurred until the arrival of M. Genet's s cessor in February 1794, who disavowed his a and recalled the commissions he had granted to vateers.

It must be remembered that the United St did not possess any navy at this time, the constr tion of a naval force not being carried out u 1794; so that even if the Government wished to a privateer, they could only do so by employ militia to board her, unless she happened to be ly under the guns of a fort.

In October, M. Duplaine, the French Vice-Con at Boston, having rescued by force a suspected ve which had been seized by the Marshall, the Un States Government withdrew his exequatur.

Congress met on the 3rd of December, and in address the President spoke of the measures adop for the preservation of neutrality, and the neces for legislation on the subject in the follow terms:—

"As soon as the war in Europe had embra those Powers with whom the United States have most extensive relations, there was reason to app hend that our intercourse with them might be in rupted, and our disposition for peace drawn question by the suspicions too often entertained belligerent nations." * * * * "In this post of affairs, both new and delicate, I resolved to ad general rules which should conform to the trea and assert the privileges of the United Stat * * * "Although I have not thought mysel liberty to forbid the sale of prizes permitted by Treaty of Commerce with France to be brought our ports, I have not refused to cause them to restored when they were taken within the protec of our territory or by vessels commissioned or equip

varlike form within the limits of the United States. rests with the wisdom of Congress to correct, rove, or enforce this plan of procedure, and it probably be found expedient to extend the legal e and the jurisdiction of the Courts of the United tes to many cases which, though dependent on iciples already recognized, demand some further visions.

Where individuals shall within the United States ay themselves in hostility against any of the Powers war, or enter upon military expeditions or enter- es within the jurisdiction of the United States, or rp and exercise judical authority within the United tes, or where the penalties on violations of the law nations may have been indistinctly marked or are dequate; these offences cannot receive too early close an attention, and require prompt and deci- e remedies." * * * * "In like manner, as eral of the Courts have doubted under particular umstances their power to liberate the vessels of a ion at peace, and even of a citizen of the United tes, although seized under a false colour of being tile property, and have denied their power to rate certain captures within the protection of our itory, it would seem proper to regulate their juris- tion in these points."

Soon after the opening of the sessions Jefferson red from the Cabinet into private life, and did not e any active part in politics for the next three rs. Washington was thus left free to carry out policy and to establish relations with England on ore friendly footing.

The early part of the session was occupied with cussions on the imposition of a protective duty on de with nations not having Commercial Treaties h the United States. This measure was aimed British trade, and was a consequence of the ill- ing that had been occasioned by the British Orders Council of June and November 1793, authorizing seizure of United States merchant-ships laden h corn for France, or found attempting to break blockade.

The next measure introduced was for the con- uction of a navy, and was intended as a provision inst the contingency of a war with England, ough nominally adopted as a defence for American mmerce against the Algerine pirates.

On the 27th of March Mr. Dayton, of New Jersey, red a resolution for sequestering all debts due to tish subjects, as a fund to indemnify citizens of United States for the unlawful depredations of tish cruizers.

Before any vote was taken, Mr. Clarke of New rsey proposed that all intercourse with Great tain should be prohibited until satisfaction was ained.

While these subjects were pending, the President, the 4th of April, communicated to Congress a patch from Mr. Pinckney, the United States nister in London, forwarding a copy of an Order Council of the 8th of January, modifying the tructions to cruizers contained in the previous lers.

This caused the popular feeling to incline in favour England, and the Republican or anti-Federal party ndoned their scheme of commercial retaliation, l assented to a proposition made by the Federalists, t a Special Mission should be sent to England to tle the various questions in dispute.

Mr. Jay, Chief Justice of the Supreme Court, a scendant of one of the families which took refuge England at the time of the revocation of the Edict Nantes, a Federalist and friend of the English ise, was selected for the post of Envoy.*

He was nominated on the 16th of April but did t arrive in London until the 15th of June.

* See the correspondence respecting Mr. Jay's mission, erican State Papers, vol. i, pages 470 to 525. (There is interesting report on the Law of Prize, furnished to Mr. by Sir W. Scott and Dr. Nicholl, which deserves attention,

The inadequacy of the existing law to deal with even the grossest breach of the Neutrality Proclamation had been shown a short time previously by the grand jury of Philadelphia having refused to find a true Bill against the French Vice-Consul Duplaine (the Vice-Consul whose exequatur had been withdrawn in October 1793) for the forcible rescue of the "Greyhound."

It was apparent that no time must be lost in amending the law on this subject, and in accordance with the recommendation in the President's message, a bill was now introduced for the purpose.

The bill was vigorously opposed by the Republicans, and "would have been defeated in the Senate, if repeated motions made with that view had not been lost by the vote of the Vice-President.

Tucker, vol. i. page 546.

"The Republican party had a majority in the Senate of one member, but the seat of Mr. Gallatin from Pennsylvania, one of that majority, having been contested and set aside on the ground that he had not been a citizen so long as the constitution required, the two parties were exactly balanced."

This Act which forms the basis of the United States Neutrality Laws, contains ten clauses and is entitled "An Act in addition to the Act for the punishment of certain crimes against the United States." (The Act thus referred to is the Act of April 30, 1790, providing for the punishment of high treason and other offences against the state or individuals.) As this Act is substantially the same as the Act of 1818, and as, in referring to that Act, attention will be called to the points in which they differ, it will be sufficient to give here a short abstract of the different Articles.

United States Statutes at Large; third Congress, sess. 1, ch. 50, June 5, 1794. British State Papers (Hertslet's) vol. iv. page 339.

Sect. 1. Any citizen of the United States within the jurisdiction of the same accepting or exercising a commission to serve a foreign Prince or State by sea or land liable to a fine of 2,000 dollars, or imprisonment for not more than three years.

Sect. 2. Any person within the jurisdiction of the United States entering himself or enlisting others, or hiring or retaining another person to enlist for the service of the army or navy of any foreign Prince or State, liable to a fine of 1,000 dollars, or three years' imprisonment. This not to apply to foreigners transiently within the United States. Any person so enlisted giving information within thirty days to be indemnified from punishment.

Sect. 3. Any person within any of the ports, harbours, bays, rivers, or other waters of the United States, fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or attempting to, &c., or knowingly concerned in the furnishing, &c., of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign State, to cruize or commit hostilities against the subjects, citizens, or property of another State, with which the United States shall be at peace, or commissioning any such vessel, to be liable to a fine of 5,000 dollars or three years' imprisonment, and the vessel, tackle, &c., to be forfeited, one half to the informer and the other half to the United States.

Sect. 4. Any person augmenting or procuring to be augmented the force of any ship of war in the service of a State at war with a State with which the United States are at peace, by adding to the number or size of the guns of such vessel, or by the addition thereto of any equipment solely applicable to war, to be liable to a fine of 1,000 dollars or imprisonment for one year.

Sect. 5. Any person within the jurisdiction of the United States setting on foot or preparing any military enterprise against any State with which the United States are at peace, to be liable to a fine of 3,000 dollars or one year's imprisonment.

Sect. 6. District courts to have cognizance of captures made within the waters or within a marine league of the coasts or shores of the United States.

Sect. 7. The militia or land or naval forces to be employed for enforcing this Act, for detaining any vessel contravening it and her prizes, and for restoring such prizes when restoration may be adjudged, and for preventing illegal military expeditions.

Sect. 8. The militia, &c., to be employed as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which, by the law of nations or the Treaties of the United States, they ought not to remain within the United States.

Sect. 9. Prosecution of treason or piracy not to be impaired.

Sect. 10. The Act to continue in force for two years, and thence to the end of the next session of Congress.*

This Act afforded an answer to M. Genet's pretensions and to Mr. Hammond's complaints. It now only remains to be seen how the British claims acknowledged in Mr. Jefferson's letter of the 5th of September 1793 were disposed of.

American State Papers, vol. i. page 520.

This was done by the insertion in the Treaty concluded by Mr. Jay on the 19th of November,† 1794, of Articles providing for the appointment of Commissioners to consider the compensation to be awarded (Article VII.) in cases of complaints made by United States merchants of loss and damage sustained "by reason of irregular or illegal captures or condemnations of their vessels and other property under colour of authority or commissions from His Majesty;" and also in cases of complaints of His Majesty's subjects, "that in the course of the war they have sustained loss and damage by reason of the capture of their vessels and merchandise taken within the limits and jurisdiction of the States, and brought into the ports of the same, or taken by vessels originally armed in ports of the said States," * * * "where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, September 5, 1793." And (Article XXI.) it is likewise "agreed that the subjects and citizens of the two nations shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign Prince or State," &c.

"Art. XXIV. It shall not be lawful for any foreign privateers (not being subjects or citizens of either of the said parties) who have commissions from any other Prince or State in enmity with either nation, to arm their ships in the ports of either of the said parties, nor to sell what they have taken," &c.

"Art. XXVIII. It is agreed that the first ten Articles of this Treaty shall be permanent, and the subsequent Articles, except the twelfth (providing for trade with the West Indies), shall be limited in their duration to twelve years" from the exchange of ratifications.

As previously stated, Mr. Jefferson's letter of the 5th of September 1793, was annexed to this Treaty, so that the effect of the 7th Article was to make compensation to Great Britain for all prizes taken by vessels fitted out by France in the United States after the 5th of June 1793, (the date of Mr. Jefferson's letter of prohibition to M. Genet,) if such prizes had been brought into ports of the United States; but not to make compensation for any prizes brought in by vessels fitted out before the 5th of June 1793, or for any prizes whatever, not brought into United States ports.

Having thus traced the United States Neutrality Law from its origin in the Proclamation of the 22nd of April 1793, to the Act of 1794, it may be convenient to notice some of the principal decisions in the Supreme Court of cases illustrative of the operation of the law as thus originally framed.

Decisions in the Supreme Court of the United States. Curtis, vol. i. page 74.

February 1794. The sloop "Betsy" (a vessel captured by the French privateer the "Citizen Genet" and sent into Baltimore).

Judgment.—No foreign Power can rightfully erect any Court of Judicature within the United States unless by force of a Treaty.

The Admiralty jurisdiction exercised by Consuls of France in the United States is not of right.

August 1795. Talbot v. Janson. Case of a Dutch vessel, the "Magdalena," brought into Charleston by the privateer "L'Ami de la Liberté," alleged to have been an American-owned Ship, armed and equipped in Chesapeake Bay and Charleston.

Judgment.—The capture of a vessel of a country at peace with the United States, made by a vessel fitted out in one of our ports, and commanded by one of our citizens, is illegal; and if the captured vessel is brought within our jurisdiction, the District Courts, upon a libel for a tortious seizure, may inquire into the fact and decree restitution.

Restitution decreed with damages.

August 1796. Moodie *v.* the ship "Alfred."

Judgment—It is not a violation of the neutrality laws of the United States to sell to a foreigner a vessel built in this country, though suited to be a privateer and having some equipments calculated for war, but frequently used by merchant-ships.

Restitution refused.

August 1796. Moodie *v.* the ship "Phœbe Anne."

Judgment.—Under the XIXth Article of the Treaty with France a privateer has a right to make repairs in our ports.

The replacement of her force is not an augmentation of it.

Restitution refused.

In June 1797 a short Act was passed prohibiting any citizen of the United States, "without the limits of the same," from fitting out and arming, &c., any private ship or vessel of war with intent, &c., or taking the command of or entering on board of, or purchasing any interest in any such vessel under penalty of a fine of 10,000 dollars, or imprisonment for not more than ten years.

This Act was entirely repealed by the Act of 1818.

The restriction imposed on intercourse with France in 1799 by the Act of Congress of the 9th of February put a stop to any further privateering cases, and the next report of a decision affecting international relations occurs in February 1804.

"Church *v.* Hubbart." Case of the "Aurora" seized at Para for attempted smuggling. The case was brought before the United States Court on a insurance claim.

In pronouncing judgment, Chief Justice Marshall observed: "The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory. Upon this principle, the right of a belligerent to search a neutral vessel on the high seas for contraband of war is universally admitted.

A case arose in 1808 as to the validity of the capture by a French privateer of a ship despatched from a port held by the St. Domingo rebels, and the subsequent condemnation of her cargo in the Court of the French Delegate at Santo Domingo, (Rose *v.* Himely. Case of the "Sarah," February 1808). Among other matters affecting the Law of Prize, it was laid down that, whether a revolted Colony is to be treated as a Sovereign State, is a political question to be decided by Governments, not by Courts of Justice, and the Courts of the United States must consider the ancient state of things as remaining until the sovereignty of the revolted Colony is acknowledged by the Government of the United States.

Restitution decreed without costs.

In March 1866 Miranda's expedition against Caracas was fitted out at New York. The expedition consisted of the "Leander," armed vessel of 18 guns, and two schooners. Miranda was met by two Spanish ships of war off Puerto Cabello. An action ensued in which he lost his schooners and was compelled to take refuge at Grenada. Fifty-seven of his followers were taken in the schooners and carried to Puerto

* Re-enacted March 2, 1797, and made perpetual April 24, 1800.

† This was the first Treaty providing for a Commission to investigate British and American claims. A second Commission was appointed under the Treaty of Ghent of 1814 to consider claims arising from the seizure of slaves; and a third under the Convention of February 8, 1853, for the general settlement of outstanding claims.

Cabello where they were tried for piracy, 10 of them condemned to death and the rest to imprisonment.

President Jefferson, in his message to Congress of the 2nd of December 1806, speaks of this expedition in the following terms: "Having received information "that, in another part of the United States, a great "number of private individuals were combining "together, arming, and organizing themselves, con- "trary to law, to carry on a military expedition "against the territories of Spain, I thought it neces- "sary, by proclamation as well as by special orders, "to take measures for preventing and suppressing "this enterprize, for seizing the vessels, arms, and "other means provided for it, and for arresting and "bringing to justice its authors and abettors. It was "due to that good faith which ought ever to be the "rule of action in public as in private transactions; "it was due to good order and regular government, "that while the public force was acting strictly on the "defensive, and merely to protect our citizens from "aggression, the criminal attempts of private indi- "viduals to decide for their country the question of "peace or war by commencing active and unautho- "rized hostilities, should be promptly and efficaciously "suppressed."

Writing to Don Valentine de Foronda in 1809, President Jefferson said of this transaction, "Your "predecessor, soured on a question of etiquette against "the administration of this country, wished to impute "wrong to them in all their actions, even where "he did not believe it himself. In this spirit he "wished it to be believed that we were in unjustifi- "able co-operation in Miranda's expedition. I solemnly "and on my personal truth and honour, declare to you "that this was entirely without foundation and that "there was neither co-operation nor connivance on "our part. He informed us he was about to attempt "the liberation of his native country from bondage, "and intimated a hope of our aid, or connivance at "least. He was at once informed that although we "had great cause of complaint against Spain and even "of war, yet whenever we should think proper to act "as an enemy it should be openly and above board, "and that our hostility should never be exercised by "such petty means. We had no suspicion that he "expected to engage men here, but merely to purchase "military stores. Against this there was no law, "nor consequently any authority for us to interpose "obstacles. On the other hand, we deemed it im- "proper to betray his voluntary communication to the "agents of Spain. Although his measures were many "days in preparation at New York, we never had the "least intimation or suspicion of his engaging men in "his enterprise until he was gone; and I presume "the secrecy of his proceeding kept them equally un- "known to the Marquis Yrujo at Philadelphia and "the Spanish Consul at New York, since neither of "them gave us any information of the enlistment of "men, until it was too late for any measures taken at "Washington to prevent their departure. The officer "in the Customs who participated in this transaction "with Miranda we immediately removed, and should "have had him and others further punished had it "not been for the protection given them by private "citizens at New York, in opposition to the Govern- "ment, who, by their impudent falsehoods and calum- "nies, were able to overbear the minds of the jurors."

Mr. Dana, in his recent edition of Wheaton, remarks, "The Spanish Government complained that a "military expedition had been fitted out in New York, "under Miranda, in 1806, to operate against Spain in "South America. There seems no doubt that this "might and ought to have been prevented by us."

The war between Spain and her Colonies broke out in 1810, and the United States Government again found themselves placed in a position of great difficulty for maintaining their neutrality. The sympathies of the people of the United States were naturally warmly enlisted on behalf of their fellow Republicans; while it would appear that the equipment of vessels to cruize against Spanish commerce was a profitable as well as a popular undertaking, and became a kind of commercial speculation.

In December 1810, a vessel named the "Exchange," of Baltimore, was captured by a French privateer on a voyage to St. Sebastian's, in Spain; afterwards coming to Philadelphia as a French public vessel under the name of the "Balaon."

The schooner "Exchange" *v.* McFadden and others, February 1812.

The French captain averred that he had put into Philadelphia from stress of weather, and produced an affidavit of the French Consul verifying his commission, and stating that the public vessels of the Emperor of France never carry with them any other document or evidence that they belong to him than his flag, the commission and the possession of his officers.

Judgment.—A public armed vessel in the service of a Sovereign at peace with the United States is not within the ordinary jurisdiction of our tribunals, while in a port in the United States.

But the sovereign power of the United States may interpose and impart such a jurisdiction.

Restitution refused.

February 1815.—The brig "Alerta" and cargo *v.* Blas.

Judgment.—If a capture be made by a privateer which had been illegally equipped in a neutral country, the Prize Courts of such neutral country have power, and it is their duty, to restore the captured property if brought within their jurisdiction, to its owner.

Vessel and cargo restored.

On the 1st of September 1815, President Madison issued a proclamation prohibiting the outfit of illegal expeditions in the United States:

"Whereas information has been received that sundry persons, citizens of the United States, or residents within the same, and especially within the State of Louisiana, are conspiring together to begin and set on foot, provide, and prepare the means for a military expedition or enterprize against the dominions of Spain, with which the United States are happily at peace; that for this purpose they are collecting arms, military stores, provisions, vessels, and other means, and deceiving and seducing honest and well meaning citizens to engage in their unlawful enterprizes; or organizing, officering, and arming themselves for the same, contrary to the laws in such cases made and provided. I have therefore thought fit to issue this my proclamation, warning and enjoining all faithful citizens who have been led, without due knowledge or consideration, to participate in the said unlawful enterprizes, to withdraw from the same without delay, and commanding all persons whatsoever engaged or concerned in the same to cease all further proceedings therein, as they will answer the contrary at their peril. And I hereby enjoin and require all officers, civil and military, of the United States, or of any of the states or territories, all judges, justices, and other officers of the peace, all military officers of the army or navy of the United States, and officers of the militia to be vigilant, each within his respective department, and according to his functions, in searching out and bringing to punishment all persons engaged or concerned in such enterprizes; in seizing and detaining, subject to the disposition of the law, all arms, military stores, vessels, or other means provided or providing for the same, and in general in preventing the carrying on such expedition or enterprize by all the lawful means within their power; and I require all good and faithful citizens and others within the United States to be aiding and assisting herein, and especially in the discovery, apprehension, and bringing to justice all such offenders, in preventing the execution of their unlawful combinations or designs, and in giving information against them to the proper authorities.

"James Madison."

"Washington, September 1, 1815.

In 1816 the Portuguese-Brazilian Government intervened by force in Buenos Ayres, and thus became

a party to the contest between Spain and her South American colonies.

In December of that year President Madison communicated to Congress the following message :

" Washington December 26, 1816.

" It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace towards belligerent parties, and other unlawful acts in the high seas by armed vessels equipped within the waters of the United States.

" With a view to maintain more effectually the respect due to the laws, to the character and to the neutral and pacific relations of the United States. I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in a course of equipment, with a warlike force, within the jurisdiction of the United States ; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions of the cases of merchant vessels furnished with the defensive armaments used on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws and which the law of nations does not require the United States to prohibit.

" JAMES MADISON."

The Committee of Foreign Affairs at the same time laid before the House of Representatives some papers relating to this subject, among which were a letter from the Secretary of State (Mr. Munroe), reporting : " That the provisions necessary to make the laws " effectual against fitting out armed vessels in our " ports for the purpose of hostile cruizing, seem to be

" 1st. That they should be laid under bond not to " violate the treaties of the United States or the " obligations of the United States under the law of " nations, in all cases where there is reason to suspect " such a purpose on foot, including the cases of vessels " taking on board arms and munitions of war, appli- " cable to the equipment and armament of such " vessels subsequent to their departure.

" 2nd. To invest the collectors or other revenue " officers where there are no collectors, with power " to seize and detain vessels under circumstances " indicating strong presumption of an intended breach " of the law : the detention to take place until the " executive, on a full representation of the facts had " thereupon can be obtained. The statute book " contains analogous powers to this above suggested. " (See particularly the 11th section of the Act of " Congress of April 25, 1808."

" The existing laws do not go this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive, where there is reason to suspect an intention to commit the offence. They rest upon the general footing of punishing the offence where, if there be full evidence of the actual perpetration of the crime, the party is bonded over after the trial to the penalty denounced."

On the 3d of March 1817, a short Act was passed, in which (in order to meet a question which had been raised as to whether the South American armies, not being formerly recognized as independent communities came within the scope of the Act of 1794,) the terms " army, district, or people, are inserted after the phrase," prince or State as it stands in the first section of the Act of 1794.

The recommendations of the president and Mr. Monroe were partially carried out by provisions in the second and third sections of this Act for a bond being taken from the owners of suspected vessels.

The president in his message to Congress of the 2d of December 1817, called attention to piratical establishments which had been constituted at Amelia Island and Galveston and stated that instructions had been given for their suppression. " These establish- " ments, if ever sanctioned by any authority whatever " which is not believed, have abused their trust and " forfeited all claim to consideration."

It appears that these places were used as rendezvous for smugglers and slave dealers who introduced slaves from them into the United States in defiance of the laws.

Amelia Island was in Spanish territory and had been the subject of negotiation between Spain and the United States.

Galveston was in the disputed territory on the Spanish and United States boundary.

It appears that " among the avowed projects of the " persons who had occupied Amelia Island was that " of making a conquest of East and West Florida, pro- " fessedly for the purpose of establishing there an " independent government. . . . The greater part " of West Florida being in the actual possession of the " United States, this project involved in it designs of " direct hostility against them ; and, as the express " object of the resolution and Act of January 15, " 1811, was to authorize the President to prevent the " province of East Florida from passing into the hands " of any foreign Power, it became the obvious duty " of the President to exercise the authority vested in " him by that law."

Moreover, it was " a matter of public notoriety that " two of the persons who had successively held the " command at Amelia Island, whether authorized " themselves by any Government or not, had issued " commissions for privateers, as in the name of the " Venezuelan and Mexican Governments, to vessels " fitted out in the ports of the United States, and " chiefly manned and officered by United States " citizens."

The Galveston establishment was formed by a Commodore Oury, principally for the purpose of privateering and slave dealing. He issued commissions in the name of the Mexican Republic, and fitted out his vessels in United States ports, and brought his prizes to Galveston, where they were condemned by a fictitious admiralty court, and the prize vessels and cargoes afterwards sent to the United States for sale. Some of these prizes were restored to the original owners by process in the Louisiana district court.

A United States force was despatched against both these establishments, and in December 1867 they were forcibly suppressed. Spain remonstrated against the occupation of Amelia Island, but the United States Government stated that it was a temporary measure which had been carried out in the public interest, and was not intended as an infraction of any Spanish rights of Sovereignty.

In 1818 a further Foreign Enlistment Act was passed (April 3) repealing and revising the Acts of 1794, 1797, and 1817. This Act is the one now in force.

The principal points in which it differs from the Act of 1794 are as follows :

Sect. 1. Instead of the words " foreign Prince or State," the words are " foreign Prince, State, Colony, district, or people," and so throughout the Act.

Sect. 2. Omits the last paragraph of indemnity to the informer.

Sect. 3. Has " within the limits of the United States," instead of " within any of the ports, harbours, bays, rivers, or other waters." The penalty is made 10,000 dollars instead of 5,000 dollars.

Sect. 4. Has no corresponding clause in the Act of 1794. It provides against the equipment of vessels " without the limits " of the United States to commit hostilities " upon the citizens of the United States or their property," under penalty of a fine of 10,000 dollars or imprisonment for not more than ten years.

This clause is similar in its general provisions to the Act of 1797, with the material difference that that Act provided for the punishment of an offence committed " without the limits " of the United States upon " *the* " *citizens or property of any Prince or State with* " *whom the United States are at peace*, or upon the " citizens of the United States or their property."

Sect. 5. Is the same as Sect. 4 in the Act of 1794, with the addition of " or by changing those on board of her for guns of a larger calibre " after the words

" by adding to the number of the guns in such vessel."

Sect. 6 (same as Sect. 5). The penalty is made *one year* instead of *three* years' imprisonment.

Sect. 7 and 8. Same as Sect. 8 and 9.

Sect. 10 and 11. The " bonding " clauses are nearly the same as those in the Act of 1817, and as they are of importance as constituting the chief difference between the English and American Foreign Enlistment Acts, are here given at length :—

" Sect. 10. And be it further enacted, that the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruize or commit hostilities against the subjects, citizens, or property, of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace.

" Sect. 11. And be it further enacted, that the Collectors of the Customs be, and they are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruize or commit hostilities upon the subjects, citizens, or property, of any foreign State, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this Act."*

Sect. 12. Repeals the Acts of 1794 and 1797.

A few more decisions in the Supreme Court remain to be noticed.

The " Divina Pastora," February 1819.

Judgment.—The Government of the United States having recognised the existence of a civil war between Spain and her Colonies, our Courts are bound to recognize as lawful those acts which war authorizes and the new Government in South America.

Captures made under their commission must be treated by us like other captures.

Their legality cannot be determined in our Courts, unless made in violation of our neutrality.

The pleadings being defective in form the cause was remanded to the Circuit Court. The result does not appear.

February 1819, the " Estrella."

Judgment.—In the absence of any Act of Congress on the subject, the Courts of the United States would have authority, under the general law of nations, to decree restitution of property captured in violation of their neutrality.

Vessel and cargo restored with costs.

February 1820. " La Amistad de Rues."

Judgment.—In cases of violation of our neutrality by any of the belligerents, if the prize comes voluntarily within our territory, it is restored to the original owners by our Courts. But their jurisdiction for this purpose under the law of nations extends only to restitution of the specific property, with costs and expenses during the pendency of the suit, and does not extend to the infliction of vindictive damages or compensation for plunderage, as in ordinary cases of marine torts.

In delivering judgment, Chief Justice Story observed : " We entirely disclaim any right to inflict such " damages, and consider it no part of the duty of a " neutral nation to interpose, upon the mere footing of " the law of nations, to settle all the rights and wrongs " which may grow out of a capture between belli " gerents. Strictly speaking, there can be no such " thing as a marine tort between the belligerents. " Each has an undoubted right to exercise all the " rights of war against the other, and it cannot be a " matter of judicial complaint that they are exercised " with severity, even if the parties do transcend those " rules which the customary laws of war justify. At " least, they have never been held within the cogni- " zance of the prize tribunals of neutral nations. The " captors are amenable to their own Government " exclusively for any excess or irregularity in their " proceedings, and a neutral nation ought no other- " wise to interfere than to prevent captors from " obtaining any unjust advantage by a violation of its " neutral jurisdiction. Neutral nations may, indeed, " inflict pecuniary or other penalties on the parties " for any such violation; but it then does it pro- " fessedly in vindication of its own rights, and not by " way of compensation to the captured. When called " upon by either of the belligerents to act in such " cases, all that justice seems to require is that the " neutral nation should fairly execute its own laws " and give no asylum to the property unjustly cap- " tured. It is bound, therefore, to restore the property " if found within its own ports; but beyond this it is " not obliged to interpose between the belligerents. " If, indeed, it were otherwise, there would be no end " to the difficulties and embarrassments of neutral " prize tribunals. They would be compelled to decide, " in every variety of shape, upon marine trespasses " *in rem* and *in personam* between belligerents, " without possessing adequate means of ascertaining " the real facts, or of compelling the attendance of " foreign witnesses, and thus they would draw within " their jurisdiction almost every incident of prize. " Such a course of things would necessarily create " irritations and animosities, and very soon embark " neutral nations in all the controversies and hos- " tilities of the conflicting parties. Considerations of " public policy came, therefore, in aid of what we " consider the law of nations in this subject, and we " may add that Congress in his legislation has never " passed the limit which is here marked out."

The action was brought on appeal from the district court which had ordered restitution and awarded damages against the captors on the ground of an illegal augmentation of force at New Orleans. The claimants having failed to prove such an augmentation of force before the Supreme Court, the sentence of the district court was reversed, and the prize restored to the captor (the Venezuelan privateer " La Guerrière ") and the damages disallowed, as stated above.

February 1822. The " Santissima Trinidad " and the " St. Ander." Curtis, vol. v. p. 269.

This was a claim preferred by the Spanish consul, as representing the Spanish owners, for " Eighty-nine " bales of cochineal, two bales of jalap, and one box " of vanilla, originally constituting part of the cargoes " of the Spanish ships ' Santissima Trinidad ' and " ' St. Ander,' and alleged to have been unlawfully " and piratically taken out of those vessels on the high " seas, by a squadron consisting of two armed vessels, " called the ' Independencia del Sud ' and the ' Altra- " vida,' and manned and commanded by persons " assuming themselves to be citizens of the United " Provinces of the Rio de la Plata."

Chief Justice Story thus stated the case as regarded the " Independencia." " She was originally built and " equipped at Baltimore as a privateer during the

* Mr. Bemis, in his pamphlet on " American Neutrality," published at Boston in 1866, remarks : " To my own appreciation both of these ' bonding ' clauses, as they are called, had " most of their neutral virtue taken out of them, when Congress " made them applicable. (1.) To ' vessels belonging wholly " ' or in part to *citizens of the United States*,' thereby leaving " *foreigners* at liberty to clear unneutrally armed ships (see " project of the Act, Ann. Con. 1816-17, p. 477 sec. 1); (2) " [illegible] limited the bond so as only to prevent ' *such* " [illegible] arming or committing hostilities, instead of " [illegible] against belligerent employment of the " [illegible] such owners ' *may sell or* " [illegible] *such vessel*.' (Ann. Cong. 1816-17, p. 478 " [illegible] by requiring that any vessel to be subject to " [illegible] must have on board ' a cargo principally consisting " [illegible] thus letting go at large a vessel " [illegible] ' manifestly built for warlike pur- " [illegible] she adopts the precaution of taking *no such* " [illegible] *is owned by foreigners*."

" late war with Great Britain, and was then rigged as " a schooner and called the " Mammoth," and sailed " against the enemy. After the peace she was rigged " as a schooner and sold by her original owners. In " January 1816, she was loaded with a cargo of mu- " nitions of war, by her new owners (who are inhabi- " tants of Baltimore), and being armed with 12 guns, " constituting a part of her original armament. She " was despatched from that port under the command " of the claimant on a voyage, ostensibly to the north- " west coast, but in reality to Buenos Ayres. By the " written restrictions given to the supercago on this " voyage, he was authorized to sell the vessel to the " government of Buenos Ayres if he could obtain a " suitable price. She duly arrived at Buenos Ayres, " having exercised no act of hostility but sailed under " the protection of the American flag during the " voyage. At Buenos Ayres, the vessel was sold to " Captain Chaytor and two other persons ; and soon " afterwards she assumed the flag and character of a " public ship, and was understood by the crew to have " been sold to the government of Buenos Ayres; and " Captain Chaytor made known these facts to the " crew, and asserted that he had become a citizen of " Buenos Ayres, and had received a commission to " command the vessel as a national ship, and invited " the crew to enlist in the service, and the greater " part of them accordingly enlisted. From this period, " which was in May 1816, the public functionaries of " our own and other foreign governments at that port, " considered the vessel as a public ship of war, and " such was her avowed character and reputation. No " bill of sale of the vessel to the government of Buenos " Ayres is produced, and a question has been made " principally from this defect in the evidence, whether " her character as a public ship is established. It is " not understood that any doubt is expressed as to the " genuineness of Captain Chaytor's commission, nor as " to the competency of the other proofs in the cause " introduced to corroborate it. The only point is, " whether, supposing them true, they afford satisfac- " tory evidence of her public character. We are of " opinion that they do. In general the commission " of a public ship, signed by the proper authorities of " the nation to which she belongs, is complete proof " of her national character. * * * The commission of " a public ship when duly authenticated, so far at " least as foreign courts are concerned, imports abso- " lute verity and the title is not examinable. * * * *

" There is another objection urged against the admission of this vessel to the privileges and immunities of a public ship. * * * * It is that Buenos Ayres has not yet been acknowledged as a sovereign independent government by the executive or legislature of the United States, and therefore is not entitled to have her ships of war recognized by our courts as national ships. We have in former cases had occasion to express our opinion on this point. The Government of the United States has recognized the existence of a civil war between Spain and her colonies, and has avowed a determination to remain neutral between the parties, and to allow to each the same right of asylum and intercourse. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the sovereign rights of war, and entitled to be respected in the exercise of those rights. * * * * * *

" The next question growing out of this record is, whether the property in question was captured in violation of our neutrality, so that restitution ought, by the law of nations, to be decreed to the belligerents. Two grounds are relied upon to justify restitution— 1. That the 'Independencia' and 'Altravida' were originally equipped, armed, and manned as vessels of war in our ports. 2. That there was an illegal augmentation of the force of the 'Independencia' within our ports. * * *

" The question as to the original illegal armament and outfit of the 'Independencia' may be dismissed in a few words. It is apparent, that though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure, contraband, indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage, she would have been justly condemnable as good prize, for being engaged in a traffic prohibited by the law of nations. But there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign parts for sale. It is a commercial venture, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation. Supposing, therefore, the voyage to have been for commercial purposes, and the sale at Buenos Ayres to have been a *bonâ fide* sale (and there is nothing in the evidence before us to contradict it) there is no pretence to say that the original outfit in the voyage was illegal, or that a capture made after the sale, for that cause alone, invalid."

On the second point, the Court found that there had been a subsequent illegal augmentation of force both of the " Independencia " and of the " Altravida," and on this ground the prize was ordered to be restored to the Spanish claimants.

February 1822. The " Gran Para."

Judgment.—It is firmly settled that if captures are made by vessels which have violated our Neutrality Acts, the property may be restored if brought within our territory. Cur pag

A vessel armed and manned in one of our ports and sailing thence to a belligerent port, with the intent thence to depart on a cruize with the crew and armament obtained here, and so departing and capturing belligerent property, violates our Neutrality Laws, and her prizes coming within our jurisdiction will be restored.

A *bonâ fide* termination of the cruize for which the illegal armament was here obtained puts an end to the disability growing out of the violation of our neutrality laws, which does not attach indefinitely, but a colourable termination has no such effect.

The prize, bullion taken out of the Portuguese vessel " Gran Para," and brought to Baltimore in September 1818 in the capturing privateer " Irresistible," sailing under the Artigan flag, was restored to the Portuguese claimants, with costs.

February, 1823. " La Nereyda."

This was an action brought by the Spanish Consul for the recovery of the brig " Nereyda." Cur v. p

The " Nereyda " was a Spanish ship-of-war, captured in 1818 by the privateer " Irresistible," of which John Daniels was the commander and Henry Childs lieutenant, and which had been illegally equipped at Baltimore. The " Nereyda " was carried to the island of Margaritta under the command of Childs, as prize master. It was alleged that at Margaritta the " Nereyda " was condemned as prize, and sold to one Franchesche ; but no proof of the sale was adduced ; and it appeared that during the short time she remained at Margaritta she was under the control of Childs, who obtained a commission as a privateer for her from the Venezuelan Government, changed her name to the " El Congresso de Venezuela," and sailed back in her to the United States, where she was eventually libelled at Baltimore.

Childs opposed the claim of the Spanish Consul by a counter-claim on behalf of the alleged purchaser Franchesche.

The case was brought up on appeal from the District Court. Time was allowed to the respondent to produce a copy of the judgment of the Margaritta prize court, and also to show that the sale there was a real one, and Franchesche a bonâ fide purchaser.

Childs failed to produce this evidence, and it having been shown that although four years had elapsed since the pretended sale, Franchesche had never asserted any rights over the vessel, which had continued in the possession of Childs and Daniels since the capture, the decree of the District Court was reversed, and the vessel restored to the Spanish Consul.

United States *v.* Quincy, January 1832. Cur x. p

The question before the Court was as to the instructions which ought to have been given to the jury of the circuit court for the Maryland district in a prose-

cution against John D. Quincy for a violation of the Act of 1818.

In December 1828 the "Bolivar," a small vessel of 70 tons, sailed for Baltimore from St. Thomas under the command of Quincy, with her owner, Armstrong, on board. At St. Thomas Armstrong fitted her out as a privateer under the name of "Las Damas Argentinas," to cruize under the Buenos Ayres flag against Brazil. Quincy continued to command her and made some prizes. He afterwards returned to the United States, and the prosecution in question was instituted against him for being concerned in fitting out the "Bolivar."

Judgment.—"It is not necessary that the jury "should believe or find that the 'Bolivar,' when she "left Baltimore and when she arrived at St. Thomas, "and during the voyage from Baltimore to St. "Thomas, was armed, or in a condition to commit "hostilities, in order to find the Defendant guilty of "the offence charged in the indictment.

"The first instruction, therefore, prayed on the part of the defendant must be denied, and that on the part of the United States given.

"The second and third instructions asked on the part of the Defendant were:—

"That if the jury believe that when the 'Bolivar' was fitted and equipped at Baltimore the owner and equipper intended to go to the West Indies in search of funds, with which to arm and equip the said vessel, and had no present intention of using or employing the said vessel as a privateer, but intended, when he equipped her, to go to the West Indies, to endeavour to raise funds to prepare her for a cruise, then the Defendant is not guilty.

"Or if the jury believe that when the 'Bolivar' was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a privateer, but had a wish so to employ her, the fulfilment of which wish depended on his ability to obtain funds in the West Indies for the purpose of arming and preparing her for war, then the defendant is not guilty.

"We think these instructions ought to be given. The offence consists principally in the intention with which the preparations were made. These preparations, according to the very terms of the act, must be made within the limits of the United States, and it is equally necessary that the intention with respect to the employment of the vessel should be formed before she leaves the United States. And this must be a fixed intention, not conditional or contingent, depending on some future arrangements. This intention is a question belonging exclusively to the jury to decide. It is the material point on which the legality or criminality of the act must turn, and decides whether the adventure is of a commercial or warlike character.

"The law does not prohibit armed vessels belonging to citizens of the United States from sailing out of our ports; it only requires the owner to give security (as was done in the present case) that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States.

"The collectors are not authorized to detain vessels, although manifestly built for warlike purposes, and about to depart from the United States, unless circumstances shall render it probable that such vessels are intended to be employed by the owner to commit hostilities against some foreign power at peace with the United States.

"All the latitude, therefore, necessary for commercial purposes, is given to our citizens, and they are restrained only from such acts as are calculated to involve the country in war."

Other cases might be quoted, but it is only intended to convey a general idea of the ruling of the United States Courts in carrying out the Neutrality Laws. There does not appear to have occurred, either during the French war or the South American war, any case similar to the "Alabama," where the vessel was dispatched to an unoccupied island, and there met by another vessel bringing her armament and crew. This no doubt is owing in some measure to the difficulty there might have been in carrying out such a project with sailing vessels.

The Spanish and Portuguese claims arising out of the system of privateering pursued by American citizens under the flags of the revolted colonies have recently been so fully discussed in the communications between Lord Russell and Mr. Adams respecting the "Alabama" and "Shenandoah" cases that a short account of the correspondence will probably be sufficient for the purposes of the present Memorandum. Parliamentary Papers, "North America, No. 1, 1861," &c.

The treaty between Spain and the United States of America of the 27th of October 1795, contained the following stipulation:

"Article XIV. No subject of his Catholic Majesty shall apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the said United States, or against the said citizens, people or inhabitants of the said United States, or against the property of any of the inhabitants of any of them, from any prince or state, with which the United States shall be at war.

"Nor shall any citizen, subject, or inhabitant of the said United States apply for, or take any commission or letters of marque for arming any ships to act as privateers against the subjects of his Catholic Majesty, or the property of any of them, from any prince or state with which the said king shall be at war. And if any person of either nation shall take such commissions or letters of marque, he shall be punished as a pirate."

When diplomatic relations between Spain and the United States, which had been suspended in 1808, were renewed in 1815, the Spanish minister addressed a note to the Secretary of State containing proposals as the basis of negotiation for the settlement of the various differences in dispute between the two countries.

The Chevalier de Onis mentions as one of the points on which an understanding was urgent, "That the "president will be pleased to give the necessary "orders to the collectors of customs not to admit into "the ports of the United States vessels under the "insurrectionary flag of Carthagena, of the Mexican "Congress of Buenos Ayres, or of the other places "which have revolted against the authority of the "King, my master, nor those coming from them, that "they should not permit them to land, or to sell "in this country the shameful proceeds of their piracy "or atrocities, and much less to equip themselves "in these ports, as they do, for the purpose of going "to sea, to destroy and to plunder the vessels which "they may meet with under the Spanish flag. This "tolerance, subversive of the most solemn stipulations "in the treaties between Spain and the United States, "and diametrically opposed to the general principles "of public security and good faith, and to the laws "of nations produces the most melancholy effects on "the interest and the prosperity of the subjects of "His Catholic Majesty. Certain it is that neither "Carthagena, nor any other place in the Spanish "dominions in this hemisphere, which has revolted, "can be in communication with any power friendly "to Spain, since neither on its part, nor on that of "any other Government, has their independence been "acknowledged; and it is, consequently, an offence "against the dignity of the Spanish monarchy, and "against the sovereignty of the King, my master, to "admit vessels from such places, manned and commanded by insurgents, and armed in the dominions "of this confederation; particularly as they are all "pirates who do not respect any flag, are justly considered the disgrace of the seas, and are execrated "by all nations." American State Papers, vol. iv. p. 423. British State Papers, vol. iii., p. 109.

(The Chevalier de Onis to the Secretary of State December 30, 1815.)

Mr. Monroe replied, "With regard to your third "demand the exclusion of the flag of the revolting "provinces, I have to observe that, in consequence of "the unsettled state of many countries, and repeated "changes of the ruling authority in each, there being "at the same time several competitors, and each "party bearing his appropriate flag, the President American State Papers, vol. iv. p. 426. State Papers, vol. iii. p. 119.

" thought it proper, some time past, to give orders to " the collectors not to make the flag of any vessel a " criterion or condition of its admission into the ports " of the United States." And he added—

" What will be the final result of the civil war which " prevails between Spain and the Spanish provinces " in America, is beyond the reach of human foresight. " It has already existed many years, and with various " success, sometimes one party prevailing, and then " the other. In some of the provinces the success of " the revolutionists appears to have given to their " cause more stability than in others. All that your " government had a right to claim of the United " States was, that they should not interfere in the " contest, or promote, by any active service, the " success of the revolution, admitting that they con- " tinued to overlook the injuries received from Spain, " and remained at peace. This right was common to " the colonists. With equal justice might they claim " that we would not interfere to their disadvantage ; " that our ports should remain open to both parties, " as they were before the commencement of the " struggle ; that our laws regulating commerce with " foreign nations should not be changed to their injury. " On these principles the United States have acted."

(Mr. Monroe to the Chevalier de Onis, January 19, 1816.)

American State Papers, vol v. p. 431,

On the 10th of June 1816, Mr. Monroe forwarded to the Chevalier de Onis a copy of a report from M. Dick, attorney of the United States for the district of Louisiana, dated March 1, 1816, denying the Chevalier's allegations of the open enlistment of men and equipment of expeditions to serve against Spain. "A regard to truth makes it necessary to " say that what is alleged respecting the arming and " fitting out of vessels within the waters of Louisiana, " to be employed in the service of the revolutionary " Governments against the subjects or property of the " King of Spain, is unfounded. At no period since " the commencement of the struggle between the " Spanish colonies and the mother country have " vessels to be employed in the service of the colonies " been permitted to fit out and arm or to augment their " force at New Orleans or elsewhere within the State " of Louisiana.

" On the contrary, it is notorious that at no one " point of duty have the civil and military authorities " of the United States directed more strenuously, or it " is believed, more successfully, their attention than to " the discovering and suppression of all attempts to vio- " late the laws in these respects. Attempts to violate " them by fitting out and arming and by augmenting " the force of vessels, have no doubt been frequent, but " certainly in no instance successful, except where con- " ducted under circumstances of concealment that " eluded discovery and almost suspicion, or where " carried on at some remote point of the coast beyond " the reach of detection or discovery. In every " instance where it was known that these illegal acts " were attempting, or where it was afterwards dis- " covered that they had been committed, the persons " engaged, as far as they were known, have been prose- " cuted, while the vessels fitted out, or attempted to " be fitted out, have been seized and libelled under " the Act of the 5th of June 1794 ; and when cap- " tures have been made by vessels thus fitted out and " armed, or in which their force was augmented or " increased within our waters, where the property " taken was brought within our jurisdiction, or even " found upon the high seas by our cruizers and " brought in, it has been restored to the original " Spanish owners, and, in some instances, damages " awarded against the captors."

Mr. Dick appended a list showing that during the year 1815 seven persons had been prosecuted and six vessels libelled under the Act of 1796 (of which three were condemned) and prizes restored to the Spanish claimants in nine cases.

It does not appear, however, that the measures adopted by the officers of the United States Government, referred to by Mr. Dick, were efficacious in preventing violations of the Foreign Enlistment Act to the satisfaction of the Spanish Minister, for on the 2d of January 1817, he addressed a further represen- tation to the Secretary of State : "The mischiefs " resulting from the toleration of the armament of " privateers in the ports of this Union, and of bringing " into them, with impunity, the plunder made by these " privateers on the Spanish trade, for the purpose of " distributing it amongst those merchants who have " no scruple in engaging in these piracies, have arisen " to such a height that I should be wanting in my " duty if I omitted to call your attention again to this " very important subject. It is notorious that although " the speculative system of fitting out privateers, and " putting them under a foreign flag, one disavowed by " all nations, for the purpose of destroying the Spanish " commerce, has been more or less pursued in all the " ports of the Union, it is more especially in those of " New Orleans and Baltimore, where the greatest " violations of the respect due to a friendly nation, " and, if I may say so, of that due to themselves, have " been committed ; whole squadrons of pirates having " been out from thence, in violation of the solemn " treaty existing between the two nations, and bring- " ing back to them the fruits of their piracies, without " being yet checked in these courses, either by the " reclamations I have made, those of His Majesty's " consuls, or the decisive and judicious orders issued " by the President for that purpose." M. de Onis complains in this note of the proceedings of several privateers at Baltimore, New York, Norfolk, and New Orleans.

No answer seems to have been returned to M. de Onis note.

In January, February, and March, M. de Onis sent in 12 other notes in the same strain, and on the 28th of March the Acting Secretary of State informed him that enquiry would be made and " adequate redress " and punishment enforced should it appear that the " laws have been infringed by any of the acts com- " plained of."

Five more notes from M. de Onis followed principally complaining of the captures effected by the " Independencia del Sud " and "Altravida" (see case of " Santissima Trinidad,") and the asylum afforded to those vessels as well as to the " Congress," " Mongore," and other privateers in American ports.

On the 22d of April the acting Secretary of State inquired whether M. de Onis had power to conclude a treaty, as, if not, it was " deemed improper to entertain discussions of the kind invited by " his late notes.

M. de Onis continued his representations in eight more notes, in one of which addressed to Mr. J. Q. Adams, dated the 2d of November 1817, he says, " It " is very disagreeable to me to have to repeat to you, " sir, what unfortunately I have been several times " under the necessity of submitting to the President " through the medium of your predecessors ; namely, " that the Act of Congress of the 3d of March 1817, " has in nowise lessened the abuses by which the laws " are evaded, and render entirely illusory the laud- " able purposes for which they were enacted. From " the greater part of the ports of these states, there " frequently sail a considerable number of vessels, " with the premeditated intention of attacking the " Spanish commerce, which carry their armament " concealed in the hold. It rarely happens that they " can be arrested, inasmuch as the collectors of cus- " toms say that they have not at their disposition the " naval force necessary to effect it ; on the other hand, " armed vessels, under the flag of the insurgents, " enter into the ports of the Union, and not only " supply themselves with all necessaries, but also " considerably increase the means they already have " of destroying the trade of Spain, as has recently " been the case at New York, whereby the (so-called) " privateers of His Majesty's revolted provinces, " which are in reality nothing more than pirates, " manned by the scum of all countries, enjoy greater " privileges than the vessels of independent powers."

In May 1818, M. de Onis, referring to a French expedition prepared at Philadelphia under General

Lallemand, and which was supposed to be intended to operate against Mexico, stated to Mr. Adams "I "would have considered myself dispensed from the "necessity of again pressing this subject on your "attention, if it had appeared possible for me to "restrain these armaments by the employment of "judicial means, but unfortunately the Act of "Congress of the 20th of April last, for preserving "neutrality with foreign nations, and others already "in force although highly judicious, are easily eluded; "and although these practices are public and "notorious throughout the whole Union, His "Majesty's consuls advise me that through a deficiency "of evidence they cannot be restrained by a regular "application of the law. (The Chevalier de Onis to Mr. Adams, May 7, 1818).

On the 9th of June 1818 M. de Onis represented that there were then at Baltimore four privateers, the "Independencia del Sud," the "Mongore," the "Republicano," and the "Alerta," three of which were notoriously fitted out there, and the fourth was a schooner captured from Spanish owners. All these vessels were commanded by Americans, and manned, with scarcely an exception, by American crews: that, however clear the facts might be to everybody, it was in vain to seek evidence to prove them, as "a great "portion of the commercial people of Baltimore "being interested in the cases which produce my "present reclamations, no one is willing to come "forward and offer testimony against what is termed "the general interest."

M. de Onis continued his complaints during the summer of 1818, and called attention particularly to the purchase and equipment of two privateers at New York.

Mr. Adams at length replied as follows:—

"I have received your letters of the 27th ultimo and 5th instant, with their respective inclosures, all of which have been laid before the President. With regard to the two vessels alleged to have been equipped at New York, for the purpose of cruizing under the flag of Buenos Ayres, against Spanish subjects, the result of the examination which has taken place before a Judge of the Supreme Court of the United States has doubtless convinced you that no prosecution commenced by the Government of the United States against the persons charged with a violation of their laws and their neutrality could have been necessary or useful to you, no transgression of the law having been proved against them.

* * * * *

"I am further instructed by the President to assure you of the satisfaction with which he has seen, in the last paragraph of your letter, your expectation of being speedily enabled to make proposals containing the bases of a treaty which may adjust, to mutual satisfaction, all the existing differences between our two nations, and his earnest hope that this expectation, in the fulfilment of which this Government have confided, and adopted measures corresponding with it, may be realized at an early day."

Negotiations were shortly afterwards set on foot for the conclusion of a treaty between the two countries, for the settlement of the differences which had so long existed between them, and among the proposals put forward by the Spanish Government were a mutual renunciation of "all claims for damages or "injuries which they themselves or their respective "subjects or citizens may have suffered," and the adoption of such laws or measures as might be required "to remedy and cut up by the roots, the abuses "which, contrary to the law of nations, and contrary "to what is expressly stipulated in the treaty of 1795, "above cited, daily occur in some ports of this union, "in consequence of the vague and arbitrary interpretation which it seems the measures until now "adopted are susceptible of, and by which means the "law is eluded."—(Mr. Adams to the Chevalier de Onis, October 24, 1818.)

The United States Government assented to the mutual renunciation of claims, but refused the other proposal, as they considered there was no occasion for any new laws or declarations. "Of the many com-"plaints which you have addressed to this Govern-"ment in relation to alleged transactions in our "ports, the deficiency has been, not in the meaning "or interpretation of the treaty, but in the proof of "the facts which you have stated, or which have "been reported to you, to bring the cases of complaint "within the scope of the stipulations of the treaty."—(Mr. Adams to M. de Onis, October 31, 1818.

To this the Spanish Minister rejoined:—

"Whatever may be the forecast, wisdom, and justice conspicuous in the laws of the United States, it is universally notorious that a system of pillage and aggression has been organized in several ports of the Union against the vessels and property of the Spanish nation; and it is equally so, that all the legal suits hitherto instituted by His Catholic Majesty's Consuls, in the courts of their respective districts, for its prevention, or the recovery of the property, when brought into this country, have been, and still are, completely unavailing. The artifices and evasions by means of which the letter of the law has, on these occasions, been constantly eluded, are sufficiently known, and even the combination of interests, in persons who are well known, amongst whom are some holding public offices. With a view to afford you, and the President, more complete demonstration of the abuses, aggressions, and piracies alluded to, I inclose you correct lists, extracted from authentic documents deposited in the archives of this Legation, exhibiting the number of privateers or pirates fitted out in the United States against Spain, and of the prizes brought by them into the Union, as well as of those sent to other ports, together with the result of the claims made by the Spanish Consuls, in the Courts of this country. Among them you will find the case of two armed ships, the "Horatio" and "Curiazo," built at New York, and detained by His Majesty's Consul there, on the ground of their having on board 30 pieces of cannon concealed, with their carriages, and a crew of 160 men. On which occasion it was pretended that it could not be proved that these guns were not an article of commerce, and they finally put to sea without them, the extraordinary number of officers and crew passing for passengers. The number of privateers, or pirates, fitted out or protected in the ports of this Republic, as well as of the Spanish prizes made by them, far exceeds that contained in the within lists; but I only lay before your Government those of which I have certain and satisfactory proofs. The right of Spain to an adequate indemnity for all the spoliations committed by these privateers, or pirates, on the Crown and subjects of His Catholic Majesty, is undeniable; but I now submit it to your Government, only to point out the extreme necessity of putting an end to these continued acts of hostility and depredation, and of cutting short these enormous and flagrant abuses and evils, by the adoption of such effectual precautions and remedies as will put it out of the power of cupidity or ingenuity to defeat or elude them. In vain should we endeavour amicably to settle and accommodate all existing differences, and thus establish peace and good understanding between the two nations, if the practice of these abuses, and the course of these hostilities and piracies on the commerce and navigation of Spain, should, as heretofore, continue uninterrupted in the United States."—(The Chevalier de Onis to Mr. Adams, November 16, 1818.)

British State Papers, vol. vi. p. 285.

The Secretary of State in reply expressed the readiness of his Government to continue the negotiations, provided the Spanish Minister would consent to waive a certain portion of his proposition (relating to the transactions in Florida, and the western boundary): but added, that if he did not feel at liberty to proceed with the negotiations on those terms, he (Mr. Adams) was ready to exchange with him the ratifications of the Convention of 1802. (Mr. Adams to M. de Onis, November 30, 1818.)

State Papers, vol. vi. p. 291.

On the 22nd of February, 1819, a treaty of Amity, Settlement, and Limits, was concluded at Washington, between the United States of America and his Catholic Majesty, and the following is a statement of the claims which each party consented to renounce:

tate Papers, vol. iii. p. 530.

Article IX. "The two High Contracting Parties animated with the most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be for ever maintained between them reciprocally, renounce all claim for damages or injuries which they themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this Treaty.

"The Renunciation of the United States will extend,—

"1. To all the injuries mentioned in the Convention of 11th August 1802.

"2. To all claims on account of prizes made by French privateers and condemned by French Consuls within the territory and jurisdiction of Spain.

"3. To all claims of indemnities on account of the suspension of the right of deposit at New Orleans in 1802.

"4. To all claims of citizens of the United States upon the Spanish Government, statements of which, soliciting the interposition of the Government of the United States, have been presented to the Department of State or to the Minister of the United States in Spain since the date of the Convention of 1802, and until the signature of this Treaty.

"The Renunciation of His Catholic Majesty extends,—

"1. To all the injuries mentioned in the Convention of 11th August 1802.

"2. To the sums which His Catholic Majesty advanced for the return of Captain Pike from the Provincias Internas.

"To all injuries caused by the expedition of Miranda, which was fitted out and equipped at New York.

"*To all claims of Spanish subjects upon the Government of the United States, arising from unlawful seizures at sea or within the ports and territorial jurisdiction of the United States.*

"Finally, to all the claims of subjects of His Catholic Majesty upon the Government of the United States, in which the interposition of His Catholic Majesty has been solicited before the date of this Treaty, and since the date of the Convention of 1802, or which may have been made to the Department of Foreign Affairs of His Majesty or to his Minister in the United States.

"And the High Contracting Parties respectively renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

"The United States will cause satisfaction to be made for the injuries, if any, which by process of law shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida."

This treaty concludes the published correspondence respecting the Spanish claims.

The correspondence between Portugal and the United States will be found in a convenient shape for reference in the Appendix to the "Alabama" papers re-published by Messrs. Longmans, Green & Co. in 1867.

Executive Documents, House of Representatives, No. 53, 32d Congress, 1st Session.

It was laid before Congress on the 4th of February 1852, together with the correspondence relating to the claims of United States citizens in Portugal arising out of the case of the "General Armstrong."

See also British State Papers, vol. 222. The following is the succinct account of this correspondence given in Lord Russell's note to Mr. Adams of the 30th of August 1865 (Parliamentary Paper, North America, No. 1, 1866, p. 26).

"The correspondence to which I refer began in December 1816, and closed with a letter of the Portuguese Minister in November 1850. It cannot be pretended that the reclamations of a friendly Power extending over 34 years did not receive the gravest attention of the American Government.

"In his first letter the Portuguese Envoy at Washington complains that Mr. Taylor, of Baltimore, an American citizen, had directed Captain Fish, of the 'Romp,' an American ship, to cruize as a privateer under the insurgent colours of Buenos Ayres against the subjects of Portugal.

"He adds, 'The 18th of last month (November) the frigate 'Clifton,' Captain Davis, armed with 32 guns of various calibres, and a crew of 200 men, sailed from Baltimore for Buenos Ayres. This ship anchored below that port, where it has remained for about a fortnight or more waiting for the American ship 'Independence of the South,' armed with 16 guns, and for the ships 'Romp,' 'Tachahoe,' 'Montezuma,' and 'Spanker,' and two others newly constructed, which were fitting with great activity and which had not yet got names. All were to sail together to cruize in the Eastern and Western Seas of South America, under the insurgent colours of Buenos Ayres. No doubt can be entertained of their instructions being the same as those of Captain Fish, and that they will act hostilely against Portuguese ships.'

"The Portuguese Envoy, Joseph Correa de Serra, prays for an amendment of the law of the United States with a view to render it more efficient in such cases. A law having been passed by Congress for this purpose, the Portuguese Envoy, in May 1817, requests that the President will desire the United States' officers on the outposts to use greater vigilance.

"In March 1818 he complains that three Portuguese ships have been captured 'by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colours.'

"In October of the same year the Portuguese Envoy complains that a Portuguese prize is fitting in the Patuxent to cruize against Portuguese commerce.

"In November of the same year the Portuguese Minister states to Mr. Adams that, obliged by his duty to inquire into the nature of the armed ships that had of late insulted the flag of his sovereign, and committed incalculable depredations on the property of his subjects, he had found, to his sorrow, multiplied proofs that many of them were owned by citizens of the United States, and had been fitted in the ports of the Union, He goes on to complain of the difficulties in the way of prosecutions, but compliments the President on his 'honourable earnestness.'

"In December of the same year the Portuguese Minister complains of the armed vessel 'Irresistible,' which had been committing 'depredations and unwarrantable outrages on the coast of Brazil.' He says, it is proved by depositions that John Daniels, the commander of the ship, is an American, and all the crew are Americans. He prays that, if the ship should come into an American port, means may be taken to bring the said captain and crew within reach of the laws made to punish such scandalous proceedings.

"In March 1819 M. Correa de Serra states, as Minister of his Sovereign, that Artigas, whose flag is frequently waving in the port of Baltimore, and which is carried by Portuguese prizes in the ports of the Union, has been expelled far from the countries which could afford him the power of navigating, and has not a foot length of sea-shore in South America where he can show himself. He prays that the Artigan flag may be declared illegal.

"In November 1819, after expressing his gratitude for the proceedings of the Executive, the same Minister complains that the evil is rather increasing. He is in possession of 'a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which had been captured during a period of profound peace. One city alone on the coast of the United States had twenty-six armed ships which preyed on Portuguese commerce, "and a week ago three armed ships of this kind were in that port waiting for a favourable occasion for sailing on a cruize.'

"In June 1820, the Portuguese Minister complains that a Portuguese prize had been sold by auction at Baltimore to Captain Chase (a notorious privateersman), and was to be immediately fitted out as a privateer to cruize against the Portuguese Indiamen.

" In July of the same year, the Portuguese Minister sends a list of "the names and value of nineteen Portuguese ships and their cargoes, taken by *private armed ships, fitted in the ports of the Union, by citizens of those States.*" His Sovereign wishes the affair to be treated with that candour and conciliating dignified spirit which becomes two Powers who feel a mutual esteem, and have a proper sense of their moral integrity. 'In this spirit I have the honour to propose to this Government to appoint Commissioners on their side, with full powers to confer and agree with His Majesty's Ministers on what reason and justice demand.'

" In December 1820 the Chevalier Amado Grehon transmitted to Mr. Adams a copy of twelve claims, with the value of the ships, desiring him to add them to the list furnished by the Chevalier Correa de Serra.

" In April 1822 the same Minister repeats the proposal made in July 1820, 'of having recourse to Commissaries chosen by both Governments for the purpose of arranging the indemnities justly due to Portuguese citizens for the damage which they have sustained by reason of piracies supported by the capital, and the means of citizens of the United States; an essential condition which, in this way repairing the past, secures also the future.'

" On the 25th of May 1850, the Chargé d'Affaires of Portugal writing to the Secretary of State of the United States declares, 'The undersigned is authorized to come to an understanding with the new Secretary of State upon the subject, and to submit the voluminous documents and papers in his possession to the joint examination and decision of the Commissioners or Arbitrators appointed by the American Government on the one part, and the Undersigned on behalf of Her Majesty's Government on the other,' &c.

" Having thus related the complaints of the Portugese Government during the years which elapsed from 1816 to 1822, and from 1822 to 1850, I will now give from the organs of the United States the answers which that Government gave to these solemn and reiterated complaints.

" In March 1817, the Secretary of State transmitted to the Portuguese Minister at Washington an Act of Congress passed on the 3rd of that month to preserve more effectually the neutral relations of the United States. On the 14th of March 1818, in answer to a letter complaining of the capture of three Portuguese ships by privateers, Mr. Adams says :—

" 'The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruize against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by captures, over which the United States have neither control nor jurisdiction. For such events no nation can in principle, nor does in practice, hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

" 'The documents to which you refer must of course be *ex parte* statements, which in Portugal or in Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are Courts of Admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners should it also be brought within our jurisdiction, and found, upon judicial inquiry, to have been taken in the manner represented by your letter. By the universal law of nations the obligations of the American Government extend no further.'

" The Secretary of State in subsequent letters promises to prosecute in the United States' Courts persons chargeable with a violation of the laws of the United States in fitting out and arming a vessel within the United States for the purpose of cruizing against the subjects of the Queen of Portugal.

" To the proposal to appoint Commissioners made in July 1820, the United States' Secretary of State, on the 30th of September of the same year, replies as follows :—

" ' The proposal contained in your note of the 16th of July last has been considered by the President of the United States with all the deliberation due to the friendly relations subsisting between the United States and Portugal, and with the disposition to manifest the undeviating principle of justice by which this Government is animated in its intercourse with all foreign Governments, and particularly with yours. I am directed by him to inform you that the appointment of Commissioners to confer and agree with the Ministers of His Most Faithful Majesty upon the subject to which your letter relates, would not be consistent either with the Constitution of the United States, *nor with any practice usual among civilized nations.*'

" He proceeds to say :—

" ' If any Portuguese subject has suffered wrong by the act of any citizen of the United States, within their jurisdiction, it is before those tribunals that the remedy is to be sought and obtained. For any acts of citizens of the United States, committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible.

" ' To the war in South America, to which Portugal has for several years been a party, the duty and the policy of the United States has been to observe a perfect and impartial neutrality.'

" The same reply is again given to Chevalier Amado Grehon in a letter dated the 30th of April 1822 :—

" I am at the same time directed to state, that the proposition of the Chevalier Correa de Serra, in his note of the 16th of July 1820, for the appointment of Commissaries chosen by both Governments to arrange indemnities claimed by Portuguese citizens for damages stated by them to have been sustained by reason of piracies supported by the capital and means of citizens of the United States, cannot be acceded to. It is a principle well known and well understood that no nation is responsible to another for the acts of its citizens, committed without its jurisdiction and out of the reach of its control.'

" The policy of the United States is further explained in a despatch of Mr. Secretary Adams to General Dearborn dated the 25th of June 1822. It is there set forth that in the critical state of the relations of the two countries, it is necessary to employ the agency of a person fully qualified to represent the interests of the United States. It is affirmed that whenever Portuguese captured vessels have been brought within the jurisdiction of the United States, decrees of restitution have been pronounced.

" In referring, however, to the list of captures and the demand of a joint Commission to determine and assess the damages to be paid by the United States, the former refusal was thus repeated : 'As there was no precedent for the appointment of such a Commission under such circumstances, and as not a single capture had been alleged for which the United States were justly responsible, this proposal was of course denied; and nothing further was heard upon the subject until the 1st of April last, when a note was received from the present Chargé d'Affaires of Portugal, leading to a correspondence, copies of which are now furnished you.'

" The correspondence seems not to have been resumed till 1850, when, as has been shown, the demand for a Commission was repeated.

" The Secretary of State of the United States thereupon gave this summary and final answer, dated May 30, 1850 :—

" ' The undersigned is surprised at the re-appearance of these absolute reclamations, accompanied by the renewal of the ancient proposition to appoint a joint Commission to determine and assess damages, a

proposition which was rejected at the time upon substantial grounds; and without the Minister's assurance to that effect, the Undersigned would not have supposed it credible that Portugal seriously cherished any intention to revive them. In reply, therefore, to the note which the Minister of Her Most Faithful Majesty has presented in the name of his Government, the Undersigned must now, by the President's order, inform him that he declines re-opening the proffered discussion."

"This despatch is signed 'John M. Clayton.'

"A long and able despatch of the Portuguese Minister at Washington, recapulating all the grievances of Portugal, dated November 7, 1850, does not appear to have received an answer."

After the close of the war between Spain and Portugal Brazil and the South American provinces the Foreign Enlistment Act seems not to have been called into requisition in any prominent case until 1848, when the United States prohibited a ship of war purchased for the German fleet during the war with Denmark from sailing from New York except under the bond required by the Act of 1818.

In 1850 a remarkable instance was afforded of the manner in which the Foreign Enlistment Act could openly be defied, when the sympathies of the American people were in favour of the offenders, in the expedition against Cuba under Lopez.

Annual Register, 1850.

Lopez had been for some time preparing an expedition for the invasion of Cuba, and on the 7th of May 1850, left New Orleans in a steamer with about 500 men, accompanied by two other vessels, and on the 17th landed at Cardenas, a small town on the north-west side of the island. Lopez occupied the town; but shortly afterwards troops arrived from Havana, and he was compelled to re-embark, and escaped to Savannah.

Memoir of Lopez in the New York Herald, quoted in the Chronicle of the 23d of September, 1851.

On the 27th of May, Lopez was arrested (see Judge Bett's charge in the "Times" of the 13th of June, 1850), but "no delay being granted by the district "judge to procure evidence against him, he was dis- "charged, amid the cheers of a large crowd. On the "15th of July, forty-two of the country prisoners "(passengers) were liberated by the Spanish autho- "rities and were taken to Pensacola by the United "States ship 'Albany.' Ten of them were retained "for trial. On the 21st of July the grand jury of "the United States' District Court at New Orleans "found a true bill against Lopez and fifteen others, "for violating the Act of 1818. The Government "failed in making out its case against one or two of "the parties, and finally abandoned the prosecution."

President's message December 1, 1851. Annual Register, 1851.

Undeterred by the failure of the first expedition, Lopez at once set to work to organize another, in which he was "countenanced, aided, and joined by "citizens of the United States." . . . "Very "early in the morning of the 3rd of August 1851, a "steamer called the 'Pampero' departed from New "New Orleans for Cuba, having on board upwards "of 400 armed men, with evident intentions to make "war upon the authorities of that island." The United States Government having received intelligence that such designs were entertained, had issued a proclamation warning American citizens of their unlawful character, and had also given instructions to the proper officers of the United States. However, in spite of these measures, the steamer in which the filibusters were embarked "left New Orleans "stealthily and without a clearance, and after touch- "ing at Key West, proceeded to the coast of Cuba."

The expedition landed in Cuba on the 12th of August, and proved an entire failure. The Spanish troops defeated the invaders without difficulty, and either took prisoner or dispersed the whole body. Fifty of the prisoners were shot and Lopez publicly executed at Havana. The intelligence of the execution of Lopez and the prisoners, 40 of whom are stated to have been Americans, produced a great excitement in the United States. A riot took place at New Orleans in which the Spanish consulate was sacked, mass meetings were held at the principal cities for the purpose of denouncing the conduct of the Cuban authorities, and further expeditions projected. The Spanish Government, however, released and sent back to the United States, a number of prisoners who complained bitterly of having been deceived by Lopez by exaggerated accounts of the condition of affairs in Cuba; and the public feeling in the United States gradually cooled down without any more attempts being made against the Island.

In 1855 the "Maury" was detained at New York on the information of Her Majesty's Consul that she was intended for a Russian privateer. The evidence, however, failed, and Sir Joseph Crampton, Her Majesty's Minister, withdrawing the charge against her, the "Maury" sailed and nothing more was heard of the matter. It was supposed that she really was intended for a privateer to act in the China seas, but that the Peace of 1856 prevented her from being thus used.

The expeditions of Miranda in 1806, and of Lopez in 1850 and 1851 were rivalled in flagrant violation of the Foreign Enlistment Act by the proceedings of Walker, and the Central American filibusters in 1857, 1858, 1859.

The disturbed state of the Central American Republics, especially Nicaragua rendered them a tempting prey to such adventurers and in November 1857 it was notorious that Walker was fitting out a filibustering expedition.

On the 10th of that month he was arrested at New Orleans, and held to bail in $2,000 (about 400*l.*) to appear on the 11th for examination, on a charge of infringing the Act of 1818. On the morning of the 11th, however, he embarked with 300 unarmed followers for Mobile, where the party were met by a steamer called the "Fashion," with 50 recruits on board, and set sail, as was supposed for central America. The United States Government gave orders for them to be pursued, and Commodore Paulding succeeded in arresting Walker.

In reporting these occurrences, Lord Napier, then Her Majesty's Minister at Washington States, "I "believe that the President and General Cass sin- "cerely deprecate and regret the present attempt to "invade the peace of Central America." (Lord Napier to the Earl of Clarendon, Nov. 16, 1857.)

It does not appear whether Walker was brought to trial for this offence, but if so the proceedings could not have been very efficacious, as in the following year he renewed his preparations for an expedition on a larger scale, and on the 30th of October 1858, President Buchanan issued a proclamation: "Whereas "information has reached me, from sources which I "cannot disregard, that certain persons, in violation of "the Neutrality Laws of the United States, are "making a third attempt to set on foot a military "expedition within their territory against Nicaragua, "a foreign State with which they are at peace." . . . "From these circumstances the inference is "irresistible that persons engaged in this expedition "will leave the United States with hostile purposes "against Nicaragua. They cannot, under the guise "which they have assumed that they are peaceful "emigrants, conceal their real intentions, and espe- "cially when they know, in advance, that their "landing will be resisted, and can only be accom- "plished by an overpowering force. This expedient "was successfully resorted to previous to the last "expedition, and the vessel in which those compos- "ing it were conveyed to Nicaragua obtained a "clearance from the collector of the port of Mobile. "Although, after a careful examination, no arms or "munitions of war were discovered, yet, when they "arrived in Nicaragua, they were found to be armed "and equipped and immediately commenced hostilities.

"The leaders of former illegal expeditions of the "same character have openly expressed their inten- "tion to renew hostilities against Nicaragua. One of "them, who has already been twice expelled from "Nicaragua, has invited, through the public news- "papers, American citizens to emigrate to that "republic, and has designated Mobile as the place of "rendezvous and departure, and San Juan del Norte

" as the port to which they are bound. This person, " who has renounced his allegiance to the United " States, and claims to be President of Nicaragua, " has given notice to the master of the port of Mobile " that 200 or 300 of these emigrants will be prepared " to embark from that port about the middle of " November," &c., &c.

Notwithstanding this Proclamation, the filibusters succeeded in sailing from Mobile on the 7th of December 1858, in the "Susan" without a clearance. A revenue cutter attempted to stop her, but was forcibly resisted. Two other vessels, the "Fashion" and the "Washington," with military stores, afterwards joined the "Susan," but the expedition broke down in consequence of the "Susan" being wrecked. Walker and his followers then proceeded to California by the Isthmus of Panama, whence they intended to make a descent on Punta Arenas.

This attempt was not carried into execution, and Walker returned to Louisiana and organized a further expedition. The United States Government gave directions to stop it, and concerted measures with the British and French Governments to prevent any such expeditions landing on the coasts of Central America. Moreover, 150 of the men concerned in the last attempt were arrested at New Orleans.

Nevertheless Walker eluded the vigilance of the authorities, and again escaped without a clearance in the "Fashion" from Mobile in November 1859, having deceived the Collector of Customs by applying for a clearance, which the collector refused, for another steamer called the "Philadelphia." At the same time a large force of filibusters are stated to have got away from Charleston, Mobile, and other ports, by means of false papers and other similar devices.

In June 1860, Walker, with a party of American filibusters, is reported to have arrived at the Bay Islands in the "John A. Taylor." Walker's career was eventually brought to a close by his being shot at Truxillo, September 1860.

On the 6th of June, 1866, the President published a proclamation warning United States citizens against engaging in an apprehended expedition against Canada (the Fenian raid), and on the 5th of June the Attorney General instructed the district attorneys and marshals to arrest "all prominent, leading, or conspicuous " persons called 'Fenians' whom they had probable " cause to believe have been or may be guilty of " violations of the Neutrality Laws." Some prosecutions were subsequently instituted against certain of the Fenian leaders, but abandoned.

In 1866 a resolution was adopted by the House of Representatives which resulted in an inquiry by the Committee of Foreign Affairs into the operation of the Foreign Enlistment Act of 1818; and in July, General Banks presented the report of the committee with a draft of a bill by which it was proposed to alter the provisions of that Act. The principal alterations proposed were the omission of section 4 (the clause forbidding the fitting out of privateers in foreign ports to cruize against American commerce) sections 6 and part of 8 (giving the President power to stop military expeditions) and sections 10 and 11, the bonding clauses.

The intention of this draft bill was to make the American Act correspond with the British Act, or, as was said at the time to "scale down" the one to the proportions of the other. The report of the committee called forth a pamphlet by Mr. Bernis, in which he shows how inexpedient and impolitic the proposed alterations would have been, and compares the amended Act with the British statute.

Copies of this pamphlet have been circulated among the Commissioners.

Congress adjourned shortly after this report was presented and had been referred to the Senate, and in March 1867 the Senate Committee of Foreign Affairs were "discharged from further consideration" of the bill.

In the meanwhile, a case had been brought before the district court at New York, in which the Act of 1818 was enforced against a vessel alleged to be intended for the Chilian service in the war between Chili and Spain.

This vessel, the "Meteor," had been built as a ship of war for sale to the United States Government, but the civil war having terminated, the sale was not effected. She was acknowledged to have been built to carry 11 or 12 guns, and the negotiations of the agent of the owners for her sale to the Chilian Government were shown by conclusive evidence.

The vessel was libelled in the district court in February 1866, but Judge Bett's decision in the case was not formally given until November.

In the elaborate judgment then delivered, the standard decisions of the supreme court are reviewed at length.

The following are some of the more important passages:

"*The Crime denounced is Fitting-out or Arming.*

"It was strenuously urged by the counsel for the claimant, on the hearing, that the only crime created by the third section of the Act of 1818, is the crime of fitting-out *and* arming a vessel with the intent named in the statute; and that, although the attempt to commit that crime, or the procuring that crime to be committed, or the being knowingly concerned in committing that crime, is punishable under the statute, yet the body of the crime is the fitting-out *and* arming, and nothing short of that is punishable under the statute, either against the wrong doer personally, or against the offending *res*; and the interpretation sought to be put by the counsel upon these words of the statute, "or shall knowingly be concerned in the " furnishing, fitting-out, or arming of any ship or " vessel, with intent," &c., is that it is not necessary to the criminality of the individual that he should have performed every part of the crime, but it is enough if he was knowingly concerned in any one step in the chain of conduct which completed the criminality, or would have completed it if carried out, but still the crime must be the crime of fitting-out *and* arming, either completed or attemped. But the Court cannot adopt this interpretation of the statute. The mischief against which the statute intended to guard, was not merely preventing the departure from the United States of an armed vessel, but the departure of any vessel intended to be employed in the service of any foreign power, to cruise or commit hostilities against any other foreign power with whom the United States are at peace. The neutrality of the Government of the United States, in a war between two foreign powers, would be violated quite as much by allowing the departure from its ports of an unarmed vessel with the clear intent to cruize or commit hostilities against one of the belligerents, as it would be by permitting the departure from its ports of an armed vessel with such intent. If the intent to cruize or commit hostilities exists when the vessel departs, and the vessel is one adapted to the purpose, the subsequent arming is a very easy matter. The facility with which this can be done was made manifest in the case of the "Shenandoah" and other vessels which, during the late rebellion, left England unarmed, but with the full intent on the part of those who sent them forth that they should be used to cruize and commit hostilities against the United States, and were subsequently armed in neutral waters. It would be a very forced interpretation of the statute to say that it was not an offence against it to knowingly fit out a vessel with everything necessary to make her an effective cruiser, except her arms, and with the intent that she should become such a cruiser, because it should not be shown that there was any intent that she should be armed within the United States. The evil consequences which would flow from interpreting the statute to mean that the crime must include the arming of the vessel within the United States, become especially apparent in reference to that part of the third section which forbids the issuing or delivering a commission, within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be em-

ployed for the purpose named in the section. Under such an interpretation of the statute it would be no offence to issue or deliver a commission within the United States for any vessel, unless such vessel were actually armed at the time or perhaps were intended to be armed prior to her departure from the United States; and it would be no offence to issue a commission within the United States for a vessel fitted and equipped to cruise or commit hostilities, and intended to cruise and commit hostilities, so long as such vessel was not armed at the time, and was not intended to be armed within the United States, although it could be shown that a clear intent existed on the part of the person issuing or delivering the commission, that the vessel should receive her armament the moment she should be beyond the jurisdiction of the United States." * * * * * * *

" The 'Santissima Trinidad' Case.

" Much reliance was placed by the counsel for the claim, in his summing up, upon the doctrine supposed by him to have been laid down by the Supreme Court in the case of the " Santissima Trinidad." That doctrine was stated by the counsel in various forms, but the principle contended for was, that freedom of commerce is allowed to a neutral to furnish to a belligerent warlike materials or warlike vessels, as articles of merchandise or traffic; that while the principle of the law of nations is recognized, which prohibits neutral territory from being used by either belligerent as a vantage ground from which he may sally forth to commit hostilities upon the other belligerent, yet the right of citizens of the neutral country to sell all that their industry produces for purposes of war, as fair matter of trade, to any belligerent, cannot be interfered with; that it is no offence and no violation of neutrality to sell a vessel of war, armed or not armed, in our ports, to a belligerent power; and that there is the same right, under the law of nations, to sell in our ports an armed vessel, under such circumstances, that there is to sell guns or ammunition or any other raw material. At another stage of his argument, the counsel maintained the proposition, that unless it appeared affirmatively that the vessel was to sail out from the port of New York as an enlisted hostile ship of one belligerent, there was no criminality, although it should be made to appear by indisputable proof that she had been built, fitted, armed, and equipped, as a ship of war, complete and ready for action.

" The views thus pressed upon the Court have, in its judgment, no foundation in public law, or in any decision that has been made by the highest judicial tribunal of the United States. The case of the " Santissima Trinidad" was decided by the Supreme Court at the February Term, 1822."

Judge Betts then gives an account of the facts of the case (*vide ante*), and continues: " In the course of " his opinion, Mr. Justice Story discusses the point " taken that the 'Independencia' was originally armed " and fitted out in the United States contrary to law, " and says, 'It is apparent that though equipped as " 'a vessel of war, she was sent to Buenos Ayres on " 'a commercial adventure,'" &c., &c. These views of Mr. Justice Story were, as is apparent from the statement which has been made of the case, *obiter dicta*, and not necessary to the decision of the cause, restitution of the property being decreed upon the ground of the illegal augmentation of the force of the capturing vessel in our ports prior to the capture. The facts in regard to the commercial adventure of the 'Independencia,' referred to by Mr. Justice Story, as they appear in the report of the case, were that that vessel, having been a privateer during the war between the United States and Great Britain, was, after the peace, sold by her original owners, and loaded by her new ones, at Baltimore, in January 1816, with a cargo of munitions of war; that she sailed from Baltimore with them, and armed with 12 guns, part of her original armament to Buenos Ayres, under written instructions from her owners to her supercargo, authorizing him to sell the vessel to the Government of Buenos Ayres, if he could obtain a suitable price; and that she was sold at Buenos Ayres to parties who again sold her, so that she became a public commissioned vessel of the Government of Buenos Ayres. It was on these facts that Judge Story remarked that the vessel, though equipped as a vessel of war, was sent to Buenos Ayres on a commercial adventure in no shape violating our laws or our national neutrality, and that there is nothing in our laws or in the law of nations, that forbids our citizens from sending armed vessels to foreign ports for sale. If the Messrs. Forbes, or any of the owners of the " Meteor," or Mr. Cary their agent, or any of the parties concerned in the transactions in regard to the " Meteor," had testified before the court on this trial, that the " Meteor" was going out to Panama on a purely commercial adventure, to be sold there if a suitable price could be obtained, and if it appeared that there was no intent on the part of the owners or any other person, that the vessel should be used to violate the neutrality of the United States, there might be some pretence that this case was within the principle thus laid down by Mr. Justice Story. But the whole testimony points in a different direction. The transaction with the agents of Chili at New York, in regard to the " Meteor," was, it is true, a commercial adventure in so far that the vessel was sold, and that such sale was a matter of trade or commerce at New York between her owners and the agents of the Government of Chili. But in the sense in which Mr. Justice Story speaks of the sending of the " Independencia" to Buenos Ayres on a commercial adventure, there was no commercial adventure in the case of the " Meteor."

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" The Doctrines laid down in this Case are the Result of the Legislative, Executive, and Judicial Action of the United States.

The importance of this case, not merely in view of the pecuniary value of the vessel proceeded against, but also in respect to the principles of public law involved in it, have led the court to a more extended discussion of those principles than would otherwise have been necessary. The court, however, entertains no doubt as to the correctness of the doctrines of public law which it has applied to the present case. Those doctrines are the result of the legislative, executive, and judicial action of the public authorities and courts of the United States in a great variety of cases, and the court has nowhere found a more excellent summary of them than in *Wheaton's International Law, (8th Edition, with notes by Dana,* pages 562, 563, note 215): " As to the preparing of vessels within " our jurisdiction for subsequent hostile operations, " the test we have applied has not been the extent " and character of the preparations, but the intent " with which the particular acts are done. If any " person does any act, or attempts to do any act, " towards such preparation, with the intent that the " vessel shall be employed in hostile operations, he " is guilty, without reference to the completion of the " preparations, or the extent to which they may have " gone, and although his attempt may have resulted in " no definite progress towards the completion of the " preparations. The procuring of materials to be used " knowingly and with the intent, &c., is an offence. " Accordingly, it is not necessary to show that the " vessel was armed, or was in any way or at any time " before or after the act charged, in a condition to " commit acts of hostility." " Our rules do not interfere with *bona fide* commercial dealings in contraband of war. An American merchant may build " and fully arm a vessel, and provide her with stores " and offer her for sale in our own market. If he " does any acts as an agent or servant of a belligerent, " or in pursuance of an arrangement or understanding " with a belligerent, that she shall be employed in " hostilities when sold, he is guilty. He may " without violating our law, send out such a vessel " so equipped, under the flag and papers of his own " country, with no more force of crew than is suitable " for navigation, with no right to resist search or " seizure, and to take the chances of capture as to

aband merchandise, of blockade, and of a market a belligerent port. In such case, the extent and aracter of the equipments is as immaterial as in e other class of cases. The intent is all. The t is open to great suspicions and abuse, and the ne may often be scarcely traceable; yet the principle clear enough. Is the intent one to prepare an ticle of contraband merchandise, to be sent to the arket of a belligerent, subject to the chances of pture and of the market? Or, on the other hand, it to fit out a vessel which shall have our port to nise, immediately or ultimately, against the comerce of a friendly nation? The latter we are ound to prevent; the former the belligerent must revent."

he judgment was given against the vessel, but she eventually restored to her owners under bond, and t became of her afterwards does not appear.

must be remembered that this opinion of Judge s was not reviewed by the Supreme Court, and is efore of inferior authority.

has been much criticised both in this country and ne United States.

his brings the history of the American Foreign stment Act down to the present time.

1838, on the outbreak of the rebellion in ada, the United States Government issued a clamation cautioning United States citizens from ting in it.

strong military force was also sent to the fron- and the President delivered a Message to Con- s recommending the enactment of some special sure to meet the occasion. In the meanwhile, xpedition was openly organized at Detroit. This dition seized the arsenal and the steam-boats, and s lying off the Detroit wharves, and succeeded in ng off to Canada without hindrance. A military was then ordered to the frontier, and sent to sburg, where another expedition was said to be g out. A Bill for the prevention of such ex- tions was introduced into Congress, but not ed until the 10th of March, by which time the llion was nearly subdued.

his Act, which was limited to two years, provided the seizure and detention of any vessel, vehicle, rms or munitions of war "provided or prepared r any military expedition or enterprise against e territory or dominions of any foreign Prince or ate, or of any Colony, district, or people, con- minions with the United States."

The British Foreign Enlistment Act.

he United States Foreign Enlistment Act, as will been seen, arose from the construction put on the s of the Treaty with France of 1778; the British ign Enlistment Act may also be said to have arisen the provision of a Treaty, that with Spain of the of August 1814.

his Treaty, or, as it is called, "Additional Articles he Treaty of July 5, 1814," contains the following cle :—

Article III. His Britannic Majesty being anxious the troubles and disturbances which unfortunately ail in the dominions of His Catholic Majesty in rica should entirely cease, and the subjects of those inces should return to their obedience to their ful Sovereign, engages to take the most effectual sures for preventing his subjects from furnishing s, ammunition, or any other article to the revolted

1818 the reactionary policy of King Ferdinand, prohibitory duties imposed by him on British com- and the ingratitude with which he treated sh officers and others who had served his cause in ia, had provoked a great deal of irritation in Eng- ; and there was a considerable party in the House Commons, headed by Sir James Macintosh, who prepared to support the claims of the Spanish- erican Colonies to independence.

xpeditions were said to be in preparation for ren- ng active assistance both to the malcontents in n and to the rebels in America, in spite of a Pro-

clamation forbidding such expeditions, which had been published in 1817; and the Government consequently found that it was necessary, in order to keep good faith with Spain, and to prevent infractions of British neutrality, to bring in an Act of Parliament to provide for the case which now for the first time arose in modern history, of Great Britain being neutral at the time of a great maritime war.

The history of the British Neutrality Law at that period is thus stated by Sir R. Phillimore :—

"The Statute of the third of James I., chapter four, made it felony for any person whatever to go out of the realm, to serve any foreign Prince, without having first taken the oath of allegiance before his departure. It was felony also for any gentleman, or person of higher degree, or for one who had borne any office in the army, to go out of the realm to serve such foreign Prince or State, without previously entering into a bond with two sureties, not to be reconciled to the See of Rome, or enter into any conspiracy against his natural Sovereign. And further it was enacted by Statute 9 Geo. II., c. 30, enforced by Statute 29 Geo. II., c. 17, if any subject of Great Britain shall enlist himself, or if any person shall procure him to be enlisted in any foreign service, or detain or embark him for that purpose, without licence under the King's signmanual, he shall be guilty of felony without benefit of clergy; but if the person, so enlisted or enticed, shall discover his seducer within fifteen days, so as he may be apprehended and convicted of the same, he shall be indemnified. It was moreover, by Statute 29 Geo. II., c. 17, enacted that to serve under the French King, as a military officer, shall be felony without benefit of clergy; and to enter into the Scotch brigade, in the Dutch service, without previously taking the oaths of allegiance and abjuration, shall be a forfeiture of 500*l*."

Phillimore's "International Law, vol. iii., ed. 1857, page 212.

The Act for the amendment of the Neutrality Laws was introduced by Mr. Canning on the 10th of June 1819, in an eloquent speech, in the course of which he said, "It surely could not be forgotten that in "1793 this country complained of various breaches "of neutrality (though much inferior in degree to "those now under consideration) committed on the "part of subjects of the United States of America. "What was the conduct of that nation in consequence? "Did it resent the complaint as an infringement of "its independence? Did it refuse to take such steps "as would insure the immediate observance of neu- "trality? Neither. In 1794, immediately after the "application from the British Government, the Legis- "lature of the United States passed an Act prohibiting, "under heavy penalties, the engagement of American "citizens in the armies of any belligerent Power. "Was that the only instance of the kind? It was but "last year that the United States passed an Act by "which the Act of 1794 was confirmed in every re- "spect, again prohibiting the engagement of their "citizens in the service of any foreign Power; and "pointing distinctly to the service of Spain or the "South American Provinces."

Cobbett's "Parliamentary Debates," vol. xl. page 1103.

On the other hand, Sir James Macintosh inveighed against the Act as a left-handed neutrality, and as aimed at the struggling independence of South America. Sir W. Scott spoke in favour of the bill on the third reading on the 21st of June, and it was passed by a majority of sixty-one.

Many amendments had, however, been introduced into it, and amongst others the insertion of the words "as a transport or store ship" in the seventh clause. This was intended to prevent British ships being hired to take troops from Spain to America; but the result has been to create the greatest confusion of meaning in the Act.

The passing of this Act seems to have put a stop, for the time at least, to the despatch of expeditions against Spain; and in April 1823. Lord Althorp moved for the repeal of the Act. Mr. Canning in reply entered into the question of the neutrality of England, and pointed out that, far from being aimed exclusively at South America, this Act was in reality in favour of the Colonies, as it extended to Spain the prohibition

Cobbett's "Parliamentary Debates," New Series, vol. viii. page 1019.

to export arms, &c., which had been already provided for against them by the Treaty of 1814. Referring to the United States law, he said: "If I wished for a guide in a system of neutrality, I should take that "laid down by America in the days of the Presidency "in Washington, and the secretaryship of Jefferson. "In 1793, complaints were made to the American "Government that French ships were allowed to fit out "and arm in American ports, for the purpose of "attacking British vessels, in direct opposition to the "laws of neutrality. Immediately upon this repre- "sentation, the American Government held that such "a fitting out was contrary to the laws of neutrality; "and orders were issued, prohibiting the arming of any "French vessel in American ports. At New York, "a French vessel fitting out was seized and delivered "over to the tribunals and condemned. Upon that "occasion the American Government held that such "fitting out of French ships in American ports for "the purpose of cruizing against English vessels was "incompatible with the sovereignty of the United "States, and tended to interrupt the peace and good "understanding which subsisted between that country "and Great Britain. Here, I contend, is the prin- "ciple of neutrality upon which we ought to act. It "was upon this principle that the bill in question was "enacted."

The motion was rejected by a majority of 106.

The Neutrality Law of the United States having formed the foundation of the Neutrality Law of this country, and the decisions of the judges of that country having been, as it were, incorporated in the law of nations, the application of the United States Foreign Enlistment Act has been treated of at some length, but as it would be useless to attempt within the compass of a memorandum to go into the intricate questions of "intent," "equipping, fitting out or arming," &c., &c., which have at various times been raised under the British Act, it is only proposed to mention some of the leading instances in which it has been put into operation or suspended.

Phillimore, vol. iii. page 229.

In 1827 an expedition of four vessels, under the command of Count Saldanha, sailed from Plymouth, ostensibly for Brazil, but in reality, as was supposed, to operate against the party of Don Miguel in Terceira. Her Majesty's ship "Walpole," with some gun-boats, was sent to Terceira to intercept this expedition. This was done off Port Praya, and the "Walpole" escorted the expedition back to the Channel. It eventually went to Brest. The "Walpole" subsequently stopped another expedition off Port Praya which had sailed from London.

In 1835 an Order in Council was passed exempting British subjects engaging in the service of Isabella of Spain from the penalties of the Foreign Enlistment Act. This enabled the Spanish Legion, under Sir De Lacy Evans, to be formed. A debate took place on the question in June 1835, but the competency of the Crown to make such a relaxation was not disputed.

Phillimore, vol. iii. pages 218 and 219.

In 1846 certain British merchants complained that an expedition was being prepared to sail under General Florez against Equador. Their representation was supported by several of the South American ministers. It appeared that three vessels, the "Glenelg," "Monarch," and "Neptune," were ready to set sail with a large number of emigrants, or, as it was said, troops on board, and that men had been openly enlisted for General Florez's service. The vessels were seized and condemned.*

Correspondence with Home Office and Treasury, October and November 1846.

In 1847 the Portuguese Minister complained that the "Black Cat" was being fitted out to proceed with volunteers for the Portuguese rebel service. The vessel was seized, but released.

Correspondence with Baron Moncorvo, April and May 1847.

Shortly afterwards he made another complaint of a number of British subjects having taken service at Oporto under the revolutionary leaders. He was told in reply, that the English law did not extend to such acts committed in a foreign country.

A Mr. Hislop, however, who had returned from Portugal after serving in the rebel army, was ... nounced by the Portuguese Minister, and would ha... een proceeded against had the Law Officers consider... the evidence sufficient.

On the 30th of August 1862 an Order in Coun... was issued, suspending the Foreign Enlistment Act, ... far as to enable Captain Osborn and Mr. Lay to ent... the service of the Emperor of China "to fit out, equ... "purchase, and acquire ships or vessels of war for t... "use of the said Emperor, and to engage and enl... "British subjects to enter the military and nav... "service of the said Emperor." This permission ... remain in force until the 1st of September 1864.

The license granted by this Order in Council w... extended to "all military officers in Her Majest... service," by the Order in Council of the 9th of Janua... 1863, with a similar limitation to the 1st of Septem... 1864.—(Hertslet's Commercial Treaties, vol. xi., p... 665–683.)

It will be observed that in all, or nearly all, t... cases up to the time of the American civil war t... Foreign Enlistment Act had been invoked to prev... the enlistment and despatch of recruits and soldi... rather than the equipment of vessels.

The American civil war introduced a new series ... cases, in which the Foreign Enlistment Act was cal... into operation. These are so well known that it w... be sufficient merely to name them in the order as th... occurred.

"Creto," tried at Nassau; released August 1862.

"Alexandra," tried in England.

This was the celebrated cause in which all the iss... as to the meaning of the equipment clauses of ... Foreign Enlistment Act were raised. The vessel w... acquitted, the four Judges in the Exchequer Co... being equally divided in opinion; the junior withdr... The costs and damages were compromised by ... Government for 3,700*l.*, and the vessel sailed ... Nassau. Here she was again seized and remai... under seizure until the end of the war.

The ironclads "El Toussoon" and "Mounassir" ... Liverpool, said to have been ordered for the Egypt... Government. The ships were seized, but eventua... purchased by Government, and are now Her Majes... ships "Wivern" and "Scorpion."

The "Canton" or "Pampero." This vessel ... seized in the Clyde, and the builder allowed judgm... to be taken against him. She remained under seiz... until the close of the war, and has now beco... notorious under the name of the "Tornado."

There were five prosecutions for enlisting men ... serve in Confederate vessels:

Mr. Rumball, the officer of Sheerness Docky... who took part in the equipment of the "Rappah... nock." He was acquitted, February 4 1865, altho... the case against him was a very strong one.

Messrs. Jones and Highat for enlisting men ... the Confederate service. They were convicted ... sentenced, November 23 1864, to pay a fine of ... each.

Campbell, enlisting for Georgia, pleaded guilty, ... released on recognizances of 150*l.* to appear w... called upon.

Seymour, Cunningham, and Buchanan, convi... of enlisting for "Rappahannock," and discharged ... recognizances.

Captain Corbett, who commanded the vessel t... took out the armament and crew to the "Shenando... at the Desertas off Funchal. A very strong case, ... the evidence for the prosecution as to the act ... enlistment of men broke down and Captain Corb... was acquitted.

The cases of the "Alabama," "Shenandoah," ... "Georgia," are fully explained in the Parliament... Papers, of which copies have been furnished to ... Commissioners.

For an epitome of the representations addressed ... Her Majesty's Government, by Mr. Adams, dur... the civil war, see the Memorandum annexed to L... Russell's letter to Mr. Adams of November 3, 18... (Parl. Paper, North America, No. 1, 1866, p. 130).

CHAS. S. A. ABBOT...

* There is no record of the trial in the Foreign Office.

Appendix No. IV.

PORTS FROM FOREIGN STATES, DECLARATIONS OF NEUTRALITY, &c.

accompanying circular was sent by the Foreign Office to Her Majesty's representatives at the of the following countries:

Austria.	Italy.	Spain.
Belgium.	The Netherlands.	Sweden.
Denmark.	Portugal.	United States.
France.	Prussia.	

Foreign Office,
February 14, 1867.

Commission which has been appointed by the to consider the Neutrality Laws of this country desirous of obtaining information respecting laws in other maritime countries, I have to instruct you to ascertain and report, with as little delay as possible, what laws, regulations, or other means the Government to which you are accredited possess for preventing acts within their territories of which belligerents might complain as a violation of the duties of neutrality.

he following papers were received, in reply.

AUSTRIA.

ived from Her Majesty's Embassy at Vienna.)

E from the Minister of Foreign Affairs to Her y's Ambassador.

BONAR, H.B.M.'s Chargé d'Affaires was to make inquiry of the Imperial Minister of n Affairs as to what laws, regulations, or es are laid down by the Government of H.I.M. r to prevent transactions in their territory of belligerent powers might complain as being an gement of the Neutrality Laws. After con- the competent authorities, the Minister of n Affairs has now the honour to communicate d Bloomfield, &c., &c., &c. with reference to ove question, as follows:

Declaration signed in Paris by the Represen- of Austria, France, Great Britain, Prussia, , Italy, and Turkey, on the 18th of April 1856, ning the Rights of Neutrals in Naval Warfare en published in legal course in Austria, and utes, therefore, a law generally in force.

rt from the principles which lie at the founda- f this declaration, there exists, however, no Austria, nor any other order generally binding, could be made to apply to violations of Neutrality strian subjects.

Imperial Government have endeavoured to this want in cases of war between other states, omulgating in legal forms special regulations e preservation of Neutrality applicable only to ar in question. Thus, in the year 1854, in quence of the war then existing, the Ministerial nance of May 25, 1854, was promulgated, of copy is enclosed herewith.

ch special declarations the generally acknow- principles of international law, as well as the views of the belligerent powers on certain , have been taken into consideration, in order, as as possible, to obviate any complaints of in- ment of neutrality.

ere does not exist, however, a law of this kind able to all future occasions, and more particularly are no general laws in Austria prohibiting the ruction, equipment, or manning of ships (in rian harbours) which are destined for belligerent rs, or are suspected of being so.

The undersigned, &c., &c.
(Signed) MEYSENBUG.

nna, May 16, 1867.

Published on the 28th May 1854.

cree of the Ministries of the Interior, of the ior, of Justice and of Trade, as well as of ommander-in-Chief of the Army, of the 25th May 1854, by which are published the principles to be observed during the war which has broken out between England, France, and the Ottoman Empire on the one side, and Russia on the other side, by the Imperial authorities and subjects with reference to trade and navigation.

In consequence of the war which has broken out between England, France, and the Ottoman Empire on the one side, and Russia on the other side, the following regulations are published with the consent of His Imperial Apostolic Majesty, given on the 23rd May 1854, according to which all Imperial, Civil and Military Authorities, as well as all Austrian subjects will have to regulate their conduct.

1. The acceptation or employment of lettres de marque under whatever form or flag, as well as every kind, share in the command, manning of or fitting out of privateers is prohibited to Austrian subjects. Whoever acts otherwise, has not only to expect no protection on the part of the Imperial Government, if he is subjected to punishment in other states, but he shall also be treated according to the existing laws for robbery, as the acceptance of lettres de marque is to be considered as an attempt at robbery.

2. Should foreign privateers provided with lettres de marque from one of the belligerent powers present themselves, the entrance into our harbours is to be refused, except in case of imminent danger from storms, and then their earliest possible departure must be insisted on.

3. It is forbidden to ships under Austrian colours to carry troops of the belligerent states, or to import into those countries commodities which according to the law of nations, or other universally known regulations, are considered as contraband of war.

Of such commodities, an Austrian ship in intercourse with these states many only carry so much as is strictly necessary for its own use or defence.

Whoever infringes on this prohibition has no protection to expect from the Austrian Government in case of legitimate seizure and confiscation on the part of the belligerent states, but will be punished besides.

4. Austrian ships are forbidden to enter into such places and harbours as are besieged by one of the belligerent powers, or blockaded by a sufficient force, as otherwise they would neither have to expect to enjoy the freedom of a neutral flag, nor assistance or interference on the part of the Imperial Government.

5. Except in this case, Austrian merchant ships are not hindered, in spite of the existing war, in carrying on their trade and intercourse with the

harbours of the powers engaged in the war, and in like manner the merchant-ships of the belligerent states may as before enter without hindrance into all Austrian harbours, remain as long as they please, get repairs, &c., &c., in so far as they observe the existing laws and regulations, and so long as their conduct is in accordance with the rules of neutrality.

With respect to the admission of foreign ships of war into Austrian harbours, the conditions of the decree of the Ministry of War of the 29th January 1850 remain in force.

6. On the expectation that the neutral Austrian trade will be properly respected by the belligerent powers, and that the customary privileges of belligerents will be exercised with a proper observance of the laws of nations, or of any modifications of them consonant with treaties, it is herewith decreed, that Austrian navigators shall not oppose themselves to visitation on the open sea on the part of foreign ships of war, but on the contrary shall, without difficulty, show the papers and documents by which their neutral capacity is proved, throw none of them into the sea, or otherwise destroy them, nor keep on board false or duplicate and secret papers.

The belligerent powers have besides officially expressed the satisfactory declaration that the property of the enemy in neutral ships, and neutral property in the enemy's ships, with the exception of contraband of war and the enemy's despatches, shall
respected and not taken.

7. The captures which the belligerents powe
make from the enemy may only be admitted into t
harbour of Trieste (with exception of every oth
Austrian harbour), where the effects may be di
embarked, deposited, administered, (in case they
not contain goods, the import of which into t
Imperial states is forbidden,) bought, or sold, or
exported anew in the course of trade, but all und
the condition that the judicial decision shall have be
given by the competent authority of the power whi
has taken the prize as to their legitimacy. Shou
some goods be exposed in the meantime to inqui
these may be sold beforehand, but only on sufficie
security for their value being given, in case t
decision should declare the liberation of the ship.

8. Should an Austrian ship, in spite of its obedien
to the above regulations, be treated in an improp
manner, information is to be given without delay
the nearest Austrian consular or other Imperi
authority, in order that the Imperial Governme
may take steps to obtain compensation and satisfa
tion from the foreign state, and when steps ha
already been taken by the injured party to suppo
them.

9. These regulations will be put in force from th
day of their publication.

BELGIUM.

(Received from Her Majesty's Legation at Brussels.)

(1.) Article 14 du titre IX. de l'Ordonnance sur la Marine de 1861.

Aucun vaisseau pris par capitaines ayant commission étrangère ne pourront demeurer plus de 24 heures dans nos ports et hâvres s'ils n'y sont réténus par des tempêtes (ou si la prise n'a été faite sur nos ennemis).

(2.) Article 84 du Code Pénal.

Quiconque aura par des actions hostiles non approuvées par le Gouvernement exposé l'Etat à une déclaration de guerre sera puni de banissement, et si la guerre s'en est suivie, de la deportation.

(3.) Article 85 du Code Pénal.

Quiconque aura par des actes non approuvées par le Gouvernement exposé des Belges à eprouver des représailles sera puni de banissement.

(4.) Déclaration du 25 Avril 1854, á l'occasion de la Guerre de Crimée.

Le commerce est informé que des instructions ont été adressées aux autorités judiciaires, maritimes, et militaires, pour les prévénir que les corsaires portant pavillon quelconque, ou munis de lettres de marque ou commissions quelconques seuls, ou avec les bâtiments qu'ils auraient capturées, ne seront admis dans nos ports qu'en cas de danger imminent de mer; ces autoritées sont en conséquence chargés de surveiller les corsaires et leur prises, et de leur faire reprendre la mer le plus vite possible.

Il a été prescrit aux mêmes autorités de ne reconnaitre de valeur légale à une commission ou lettre de marque délivrée par les Puissances belligérantes sa
l'autorisation du Roi.

Toute personne soumise aux lois du royaume q
ferait des armements en course, ou qui y prendra
part s'exposerait donc d'un côté d'être traité comm
piraté à l'etranger, et de l'autre à être pour-suiv
devant les tribunaux Belges suivant toute la rigue
des lois.

(5.) Déclaration du 8 Mai 1859 à l'occasion de Guerre d'Italie.

La Belgique a adhéré aux principes posés dans
déclaration du Congrès de Paris du 16 Avril 1856.

Le commerce est informé que des instructions o
été adressées à ce sujet aux autorités judiciares, mar
times, et militaires.

Toute personne soumise aux lois du royaume q
ferait des armements en course, ou qui y prendra
part, au bien qui poserait des actes contraires a
devoirs de la neutralité, s'exposerait d'un côté à êt
traité comme pirate à l'etranger, et de l'autre pou
suivie devant les tribuneaux Belges suivant tout
rigueur des lois.

(6.) Déclaration du 22 Juin 1861, à l'occasion de Guerre d'Amérique, indentique à la déclar tion du 8 Mai 1859.

(7.) Déclaration du 11 Jui 1865, à l'occasion de Guerre entre Brésil, et le Paraguay, égaleme identique.

(8.) Déclaration du 18 Février 1866, à l'occasion la Guerre entre l'Espagne et le Chili, et cel du 14 Mars 1866, à l'occasion de la Guerre ent l'Espagne et le Pérou, également identiques.

DENMARK.

My Lord, Copenhagen, April 30, 1867.

In pursuance of the instructions contained in your Lordship's circular despatch, of the 14th of February, addressed to Sir Charles Murray, I have the honor to transmit herewith to your Lordship copy of a note that has been addressed to me by Count Frys Frysenborg, transmitting copies of the Danish laws and regulations in vigor for the prevention of acts within Danish territories of which belligerents might complain as a violation of the duties
neutrality.

Enclosure No. 2 to this despatch is a set of law
with translation, dated May 4, 1803, for the guidan
of merchants and shipmasters in time of war betwe
maritime powers. In the 13th article are enumerat
the goods that are to be considered as contraband
war.

Very important special regulations are laid dow

Article 14, with a view to controlling the shipment
articles contraband of war, and to ensuring their
ie delivery at neutral ports.

According to the 18th Article, Danish owners and
asters of merchant vessels who infringe the law not
ly forfeit their right to Danish citizenship and the
otection of their Government, in case of seizure by
e enemy, but likewise expose themselves to prose-
tion by the tribunals of their country.

Various articles of the law of May 4, 1803, will be
nulled by the provisions of a new law bearing date
arch 13, 1867 (copy of which, together with a trans-
tion, was transmitted to your Lordship's office by
r. Consul Bridges Taylor, in his despatch, of the
7th instant,) and which is to come into force in the
onth of October of the present year.

In it are defined the character of the ship's papers
hich all Danish merchant ships will in future be
quired to possess in order to prove their nationality.

They will consist of a certificate of registry, the
ticles of agreement, custom-house clearance, charter
rty, and bills of lading.

The ancient Latin passports are abolished.

By a set of regulations embodied in an ancient
rcular of the Royal Danish Chancellerie, dated May
), 1823 (Enclosure No. 4 in this despatch, with
anslation), privateers are forbidden to enter Danish
rts, except on account of stress of weather or
rsuit by an enemy. They are bound, however, to
uit their place of refuge so soon as the danger be
ast.

An injunction is likewise laid on foreign vessels of
ar, as well as privateers, from sending their prizes to,
selling them or their cargoes in Danish ports, and
anish subjects are strictly forbidden to purchase any
ize brought into Danish ports.

The 6th enclosure to this despatch is copy of a
rcular, together with translation, which was ad-
essed, during the Crimean war, to the commanders
f vessels stationed in Danish waters, and points out
ie course they were directed to pursue in order to
aintain the neutrality of Danish territory, and to
revent the commission of any act that might give
mbrage to either of the belligerents at that time
gaged in hostilities.

I have likewise the honour to enclose herewith to
our Lordship copy of the 76th Article of the Danish
enal Code of February 10, 1866, fixing the penalties
be inflicted on persons who, without royal authori-
ation, should enlist soldiers in Denmark to serve in a
oreign war.

I have the honour to be,
with the highest respect,
My Lord, Your Lordship's
most obedient humble Servant,

The Lord Stanley, M.P., FRANCIS CLARE FORD.
&c. &c. &c.

MONSIEUR, Copenhague, le 26 Avril 1867.

APRÉS m'être concerté avec les Ministres com-
étents sur la teneur de la note que Sir Charles
Murray m'a adressée en date du 19 Février de
année courante au sujet des dispositions de loi
estinées à prévenir sur le territoire Danois des
ctes dans lesquels, en cas de guerre entre des
uissances étrangères, celles-ci pourraient voir une
iolation des devoirs d'un état neutre, j'ai l'honneur
es vous faire parvenir sous ce pli :

I. Un exemplaire de l'ordonnance du 4 Mai 1803
ontenant les règles que les armateurs et capitaines de
avires ont à observer pendant une guerre maritime à
aquelle le Danemark ne prendrait point part.

II. La copie d'une circulaire de la ci-devant Chan-
ellerie Royale Danoise en date du 20 Mai 1823
ndiquant les conditions auxquelles les vaisseaux de
guerre et les corsaires des puissances belligérantes
ourraient entrer dans les ports Danois pendant une
guerre dans laquelle le Danemark ne serait pas
partie.

III. Une circulaire qui pendant la dernière guerre
d'Orient a été adressée aux chefs des vaisseaux de la marine royale ayant station dans les parages Danois, et qui leur prescrivit la ligne de conduite que, conformément à la législation du pays, ils avaient à suivre pour maintenir la neutralité du territoire Danois et empêcher des actes de nature à donner ombrage à l'une ou l'autre des puissances belligérantes.

IV. La traduction Française de l'article 76 du code pénal du 10 Fevrier 1866 qui indique les peines encourues par les personnes qui, sans la permission du Roi, recruteraient des soldats sur le territoire Danois pour le service militaire d'une puissance étrangère.

En appelant votre attention sur la teneur de ces ordonnances et publications je crois devoir vous donner une courte analyse des principales dispositions de l'ordonnance du 4 Mai 1803.

Les articles I. à XIII., contiennent des prescriptions détaillées sur les papiers de bord, dont, en cas de guerre maritime entre des états étrangers, les navires de commerce Danois doivent être munis pour constater leur nationalité. A l'egard des ces prescriptions je dois toutefois vous faire observer, que, la présence à bord des navires marchands de passeports Latins n'etant pas exigée par les traités entre le Danemark et la Grande Bretagne (voir la note de Lord Russell au Ministre du Roi à Londrès en date du 29 Juin 1861) le Gouvernement a dispensé les armateurs Danois de l'observation des articles de l'ordonnance du 4 Mai 1803, qui ont trait à les passeports. Aussi par une nouvelle loi du 13 Mars de l'année courante, dont je joins ici un exemplaire, plusieurs de ces mêmes articles ont été abolis ou modifiés ; l'article 2 de la loi du 13 Mars ne demandant comme preuve de la nationalité d'un navire de commerce que le document dit "certificat de nationalité ou d'enregistrement" qui constate que le navire a été porté sur la registre des bâtiments qui sont en possession du droit de naviguer sous pavillon Danois.

À l'exception de ce document tout navire enregistré n'est tenu d'après ce même article, d'avoir á bord, soit en temps de guerre soit en temps de paix, que le rôle d'equipage, le certificat d'expédition de douane et les papiers relatifs à la cargaison.

Afin de prévenir l'abus du pavillon Danois à couvrir des articles de contrebande de guerre l'article XIII. de l'ordonnance du 4 Mai 1803 donne une enumération des objets qui doivent être considérés comme appartenant à cette catégorie, lorsqu'ils sont destinés aux puissances belligérantes ou à leurs subjets.

Par l'article XIV. il est interdit aux capitaines de commerce de transporter dans leurs navires les articles de contrebande mentionnés dans l'article précédent, à moins qu'il ne soit dûment constaté qu'ils sont destinés à êtré importés dans un port neutre. Si tel est le cas l'armateur et le capitaine du navire, au moyen duquel le transport des marchandises se fait, sont obligés à observer les formalités que précise le même article pour qu'il soit demontré que les marchandises ont été réellement importées dans le port neutre.

L'article XV. enjoint aux capitaines des navires de commerce de respecter les publications du Gouvernement du Roi relatives à la notification qui lui a été faite du blocus d'un port d'une des puissances belligérantes. Si les capitaines n'ont pas eu connaissance du blocus par des publications de cette nature et qu'ils se soient approchés du port bloqué, l'article XV. les invite à se conformer également aux avis que les chefs des vaisseaux de blocus leur en donneraient sur les lieux mêmes.

Je me permettrai encore d'ajouter que d'après l'article XVIII. de l'ordonnance dont il s'agit, les armateurs et les capitaines de navire qui contreviendraient aux dispositions de cette loi sont nonseulement privés du droit de réclamer la protection du Gouvernement du Roi contre les mesures coercitives que les puissances belligérantes pourraient prendre vis-à-vis d'eux, mais ils peuvent en outre être condamnés par les tribunaux du pays à des peines plus ou moins graves selon la nature des contraventions qui leur sont imputées.

Espérant que les observations que je viens de vous

presenter satisferont à la demande qui m'a été faite, je profite de cette occasion &c. &c. &c.

(Signed) FRYS FRYSENBORG.

A Monsieur Ford, Chargé d'Affaires
de Sa Majesté Britannique.

RULES FOR THE GUIDANCE OF MERCHANTS AND SHIP MASTERS IN TIME OF HOSTILITIES BETWEEN MARITIME POWERS.

We Christian VII. by Grace of God King of Denmark and Norway, the Goths and Vandals, Duke of Sleswig, Holstein, Stormarn, Ditmarch, and Oldenburg:

Make known,—Although we, by several previous resolutions, fixed the rules according to which our traders and seafaring subjects should be guided when war broke out between foreign maritime powers, we have, nevertheless, found it necessary under the present circumstances to make one condensed enactment, embodying those parts of these former resolutions, that they may hereafter serve as a rule of guidance for these our subjects, and become publicly known; and also so that no Danish subject shall plead ignorance of his duties in these respects, it is our gracious will that the following enactments hereafter shall alone be followed and accurately conformed to by all and every one who wishes to share in the advantages which our neutral flag in time of war will give to their lawful trading and maritime speculations; and to this end we hereby annul and declare void all our former enactments. We order and command as follows:—

Article I.—Those our trading and seafaring subjects who wish to send any of their ships to sea to any foreign places to which the effects of the war have or may reach, shall be bound (always in conformity with the rules and regulations laid down in the following law) to acquire a royal Latin sea pass or permit, as well as the other ship's documents and papers exacted by law. To this end, on the breaking out of hostilities between foreign powers, it will be necessary to decide and make known for what places it is considered necessary that ships should be provided with our Latin sea pass.

Article II.—The pass cannot be obtained before the owner of the ship for which it is required has provided himself with the necessary ship's certificate in proof of his lawful right of ownership.

Article III.—No one can obtain a ship's certificate who is not our subject, either by birth in our kingdoms and countries, or who, before the breaking out of hostilities between any of the maritime powers of Europe, was in full possession of the rights of citizenship, either in our or other neutral states. In all cases the owner of a ship for which a certificate is demanded shall be domiciled in some place in our kingdoms and countries.

Article IV.—He who, according to the foregoing articles, is entitled to obtain or claim a ship's certificate, shall, in order to receive the same, present himself to the magistrate or authorities of the city or place to which the ship belongs, or where the principal number of its owners are domiciled, where either they, or at least the chief owner, has, in person or by means of a written and signed oath, declared that the ship belongs to him, or to one or more of our subjects, and that the ship for which the certificate is demanded has no contraband of war on board destined for the use of the belligerent powers or their subjects.

Article V.—No one, on the breaking out of hostilities, shall be permitted to command a ship provided with our royal sea pass who may have been born in any of the countries of the belligerent powers, unless he, before the breaking out of hostilities, shall have acquired rights of citizenship in our kingdoms and countries.

Article VI.—Every ship master who will command a ship furnished with our royal Latin sea pass must have acquired citizenship at some place in our kingdoms and countries.

He is bound constantly to have his letter of citizenship with him on board. As a security that he undertakes nothing that may be in contradiction with the provisions of this our enactment, he shall be bound, before departure from the harbour where he receives the pass, to take an oath that nothing with his will shall be undertaken whereby the pass and certificate given to him shall be misapplied.

Such oath made by the master shall accompany the owner's application for the delivery of the permit. But when, on account of the absence of the ship's master, this cannot be accomplished, the owner shall state the fact, and then our consul or commercial agent in the district where the master happens to be shall be answerable that when the master receives the permit he shall take the required oath.

Article VII.—On ships which are to be furnished with the royal Latin sea pass, no supercargo, factors, clerks, or other ship's officials who are subjects of the belligerents shall be permitted on board.

Article VIII.—Half the crew, including the mate, shall consist of the subjects of our kingdoms and countries. Should it happen that a crew in a foreign country, through desertion, death, or sickness, become incomplete, so that it is impossible for the master to comply with this enactment, he shall be permitted to engage as many foreigners (especially subjects of neutrals) as may be required to continue the voyage; however, in no case shall the number of the subjects of the belligerents who may be on board the ship exceed a third part of the crew.

Every change connected with such alterations in the crew, together with the reasons calling for them, shall be carefully entered by the captain on the ship's articles, which shall be attested each time and signed by our consul or commercial agent, or their deputies resident in the ports the ship may put into, and such endorsement shall serve as a justification for the master in all subsequent contingencies.

Article IX.—Besides the ship's certificates mentioned in Article II., the following ship's documents shall always be found on board the ship:—

The shipbuilder's certificate, and, inasmuch as he who built the ship may later have sold it to another then also the bill of sale or title deed shall be present.

The documents, on application for the delivery of the pass, shall be sent by the owner to the proper authorities, accompanied by the certificate, in proof of the ship's lawful right to claim the certificate.

The royal Latin sea pass, with the accompanying translation.

Measure bill, or certificate of measurement.

Articles of agreement and list of the crew, which must be properly attested by the competent authorities.

Charterparties and bills of landing of the cargo; and, lastly,

Custom-house clearance from the place where the cargo was taken in.

Article X.—The measure bill shall be delivered by the authorities of our kingdoms and countries properly authorized to measure ships. In case any of our subjects purchase a ship in a foreign port, our consul or commercial agent at the place shall be authorized to have the ship measured, and thereafter deliver to the master of the ship a provisional measure bill, which shall be considered valid until the ship arrives in one of our harbours where the ship can be properly measured and branded, and a permanent measure bill be made out, which shall remain with the ship.

Article XI.—It is forbidden to all and everyone, owners as well as shipmasters, to procure for themselves and to have on board duplicate ship's papers, or to carry a foreign flag, as long as they are sailing with papers and documents graciously given by us.

Article XII.—Our royal Latin sea pass is only valid for one journey, *i.e.*, from the time the ship after receiving it quits its home port and until the time it returns to it; unless the ship in the meantime by lawful sale has been transferred to another party, in which case the new owner must obtain the necessary passes and documents in his own name.

Article XIII.—According to ordinary received principles, the subjects of neutral powers cannot be permitted to have goods on board which can be considered as contraband of war when they are destined for the belligerent powers or their subjects, or already belong to them; so have we, the King, in order to prevent our flag being misused to cover or protect such carrying of contraband articles, and in order that no one in this respect shall excuse himself on the ground of ignorance, hereby and expressly decided what should be classed under the denomination of contraband of war. Hereafter the following articles and goods of all and every one our subject shall be considered as contraband of war:—Cannons, mortars, all kinds of weapons, pistols, bombs, grenades, cannon balls, and bullet lead, flint stones, fusees and tinder, gunpowder, saltpetre, sulphur, cutlasses, pikes, swords, fittings, cartouche boxes, saddles, and bridles; however, with the exception of such quantities of these articles as may be requisite for the protection of the ship or of its crew.

Besides one must in every respect conform to all special stipulations or positive contracts which we, the King, have agreed to with foreign powers in relation to the carrying of prohibited goods and properties in our subjects' ships, in which case the owner on receiving the pass will be furnished with special instructions for his guidance.

Article XIV.—Should a ship bound for a foreign port take in such goods which, if they were destined for any of the harbours or ports of the belligerent powers, would be considered as contraband of war, in addition to the oath which the owner and shipmaster should have to take before the proper magistrate or authority, the persons who load such ships and the master shall also be bound, in conformity with the invoice of the cargo or bills of lading, to draw up, besides the ordinarily required custom clearance, a special declaration which shall contain a classification of the merchandise in question, with their qualities and value, which declaration signed by the shipper and master shall be certified by the custom-house authorities at the place where the clearance is given.

The declaration thus attested shall without delay after the clearance of the ship be sent by our custom officials to the Chief Commissioners of Customs, and shall serve to control the correct arrival of the specified goods at their specified destination, provided they have not been lost by accident at sea or by capture. The control shall be carried out in the following manner:—The shipper of the goods in question shall procure a certificate from our consul or commercial agent at the place to which the ship is bound, or when we have no consul or commercial agent there, a certificate from the lawfully authorized local authorities certifying the due arrival and discharge of the merchandise in conformity with the declaration. This certificate shall be procured and sent in to the Home Office as soon as the ship arrives at its destination or reaches some home port.

Should the certificate not be forthcoming in a reasonable time proportionate to the length of the journey, our Home Office shall demand a declaration from the shipper to the effect that he declares on oath that he has received no information about the goods or the ship. Should the arrival of the ship and the discharge of the goods in question in a neutral port not be clearly proved, and no accident or violent capture have taken place to prevent the arrival and [illegible] the shipper shall pay to the Treasury a fine of 20 rix dollars for every commercial last of the ship's burden; besides both owner and master shall be liable to an action at law.

Article XV.—No shipmaster shall sail to any port blockaded from the sea side by one of the belligerent powers, and he shall in every respect carefully pay attention and conform to the warnings communicated to him by the authorities relative to the blockade of ports. In case he, on sailing into any port (the blockade of which has not previously been brought to his knowledge), meets any ship carrying a flag of war of any of the belligerent powers, and it is notified to him by the commanders that the port is really blockaded, he shall immediately retire from it without in any way seeking clandestinely to break the blockade.

Article XVI.—None of our subjects shall take service on board privateers, much less themselves arm or be interested in the arming of such ships; neither shall any owner or shipmaster allow his ship to be used for the transport of troops, weapons, or contraband of war, of whatsoever description. Should any shipmaster be unable to prevent his ship (through irresistible force) being misused as above mentioned, it shall notwithstanding be his duty to protest, and with all his power and by a formal act, against such violent proceeding which he has been unable to obviate.

Article XVII. When a merchantman, not sailing under convoy, is spoken with at sea by any armed vessel belonging to the belligerent powers who have the right of visitation, the shipmaster shall not oppose such visitation, if effected by the commander of such above-mentioned armed ship, but is bound on the contrary faithfully and without reserve to show all the documents appertaining to ship and cargo. Both the shipmaster, his officers and crew, are strictly forbidden to throw overboard or in any other way to destroy or conceal any documents or papers on board belonging to the ship or cargo, either before the visitation or whilst it takes place. When the protection of our flag of war is granted to merchandise, every shipmaster, before he is taken under convoy, shall exhibit his ship's papers to the chief of the convoy, and in every case most carefully conform to his orders.

Article XVIII. Should anyone, be he owner or master, act in contravention to these enactments, he shall lose his citizenship and the right to own or command ships; moreover, he shall be prosecuted accordcording to law, and according to circumstances be punished either for perjury or for having infringed our royal mandates. On the other hand, we will cause to be respected and protect the lawful enterprises by land and sea of our faithful subjects, so long as they conform to the foregoing rules and regulations, to which end we have enjoined and ordered all our ministers and consuls, and other authorities in foreign parts to endeavour to their utmost to ward off and prevent any inconvenience or violence being suffered by our subjects, and in case such should have occurred then to aid the injured parties and endeavour to assist them to obtain justice and compensation. Likewise We, the King, will at all times graciously give our support to every just complaint which our subjects in the above respects may feel themselves called upon to lay before us.

Given at our Royal Palace at Copenhagen,
May 4, 1803.
Under our Royal Hand and Seal,
CHRISTIAN R.

ROYAL DANISH CHANCELLERIE'S RESOLUTIONS OF MAY 20, 1823.

The Royal Department of Foreign Affairs has announced to this Chancery that, under date of the 30th of last month, it has pleased His Majesty the King graciously to resolve that it shall not be allowed to any privateer, of whatever nation, to remain in any Danish harbours or waters.

Only in case that such privateers, forced by pressing danger of storms, bad weather, or that pursuit by the enemy occasion dangers, seek refuge in a Danish port, then they shall be received and receive such help as humanity may dictate, but they shall be bound immediately the danger is over to put to sea again. Neither shall any privateer be permitted to send his prizes to Denmark, or to sell them there; and in the last-mentioned case, when privateers, forced by necessity, seek refuge in Danish ports, they shall neither unload nor load prizes they may bring with them, neither shall they sell these or their cargoes or any part of them in Danish harbours.

To this end it shall by public notice be stringently forbidden to all His Majesty's subjects to buy foreign privateers' prizes. When foreign men of war run into Danish harbours they may be obliged to bring the prizes they may have taken with them, and shall neither unload nor load them or sell them, wholly or partly, them or their cargoes.

In communicating this royal resolution, we will beg you kindly to communicate its contents to all the officials within your jurisdiction, that they may take cognizance of the same, and make known to all and everyone that they are stringently forbidden to purchase prizes brought in by foreign privateers.

Certified by the expediting Secretary in the Ministry of Justice, March 26, 1867.

INSTRUCTIONS FOR THE GUIDANCE OF COMMANDERS OF DANISH SHIPS OF WAR DURING THE CRIMEAN WAR.

1. At the station at which you are placed it is your duty, with the ship under your command, in the best manner to preserve good order on the coast and in the roads and harbours, to take measures that trade and navigation is carried on in its usual uninterrupted manner, without suffering molestations from the men-of-war who may be on the spot.

It is desirable that foreign men-of-war should always find Danish men-of-war in their neighbourhood, whenever they appear in our waters, and you will, therefore, as soon as you ascertain that foreign ships of war are in the waters of your station, approach them and follow their movements. The ship under your command should properly be considered as a guard ship in the station, for which reason you will also, when at anchor, fire off watch signals, &c.

2. You must show foreign men of war, of whatever nation they may be, with which you may come in contact, all possible attention and politeness, but you must abstain in every manner from giving them assistance, except such as humanity may call for, especially you must not assist them in their navigation, by procuring for them local pilots, or by other nautical assistance.

3. In cases where foreign men-of-war have communication with land, you will give over the keeping of order on shore to the proper police authorities or harbour officials, but you shall in word and deed render assistance everywhere where it may be required, and where conflicts may arise either by reason of misunderstandings, want of knowledge of the language, on the part of the one side or of the other, or on account of possibly exaggerated claims on the part of the foreign ships. You shall in these cases come forward as mediator to clear up matters, and indeed act as a reconciliator, but be at the same time decided and serious everywhere, where the question is to keep up or make good the right of the King's subjects and the neutrality of the Danish territory.

Danish mile = 5 English miles.

4. The Danish territory extends one Danish mile from the *terra firma* of the King's country (see the circular from the Ministry of August 18, 1810); excepted herefrom, however, is the Sound at Kronborg and the Elbe at Glückstadt, where Danish territory only stretches a cannon shot from land, or 3,000 ells.

2,000 yards.

5. It is the will of His Majesty the King that the ships of all nations shall be under the protection of Denmark when in Danish territory, and within its territorial limits, within which the Danish neutral rights must be maintained, so that the bringing up or visiting of ships, be they belligerent, neutral, or national, shall not be permitted within these territorial limits.

6. The bringing of prizes into Danish ports is forbidden. When prizes are anchored in open roads or off the coast of the Danish territory, it must be supposed that this occurs only from the force of circumstances; but you shall then request the bringer up or prize master to take away the prize as soon as possible, and you must watch with care that nothing is sold or brought on shore or landed from the prize whilst it remains in Danish waters or territories.

The necessary warning in this respect shall be given in these cases as soon as possible to the proper authorities on shore.

7. If a ship of war or merchantman flying before an enemy seeks refuge in Danish territory, it is your duty to take it under your protection. It is to be hoped that a warning to the pursuing man-of-war (preferably by sending a boat with an officer on board, or, if necessary, by a warning signal,) will be sufficient to ward off such a breach of neutrality; but should, contrary to expectation, a seizure or bringing up take place in Danish territory, you have then only, by a protest framed in a decided but serious and polite tone, to make known to the commander of the foreign man-of-war that he has committed a breach of Danish neutrality and territorial rights.

You will thereupon, as soon as possible, report to your government what has taken place, and send a copy of the protest, together with a statement of the name of the ship and its commander, &c. &c.

8. When foreign ships of war wish to run into harbours within the limits of your station, you will watch that the ship conforms to the rules of the harbour, both as regards the local or general regulations, such, for instance, as discharging of gunpowder, putting out fires, &c. &c.

9. Privateers shall not be suffered within Danish territories, and still less shall they be permitted to run into any Danish harbour except in case of distress. It must then be stringently looked to that they deliver up gunpowder and weapons, and in every case conform to the police regulations of the harbour. Their stay in harbour shall not be suffered longer than absolutely necessary for their repairs.

If privateers should bring prizes into Danish territory they shall be immediately sent back.

Privateers, on refusing to comply with these orders in Danish territory, necessary force shall be applied to enforce compliance; but you must, before you have recourse to force, carefully convince yourself that the vessel in question is really a privateer and not a man-of-war, and if you consider it necessary you may, for this purpose, demand to see the commander's commission or patent.

10. Outside of the Danish territory the sea must be considered as open water, on which account you will look upon every act of belligerent ships taking place outside of our territories as not concerning you.

Should, however, foreign men-of-war, in open waters, but within sight of you, overhaul Danish merchantmen, you must try and obtain permission for such vessels to proceed on their course, but in these cases you can only come forward as mediator. If the foreign inspecting man-of-war declares it to be his duty to bring up such vessel and that this takes place on account of the ship being loaded with contraband of war bound for one of the belligerent's harbours, you cannot oppose it, but can only, as soon as possible, report the case to the proper government department. Should, contrary to expectation, a foreign man-of-war in your vicinity attempt to molest a Danish merchantman, for instance, by taking his crew, merchandise, provisions, or ship's space, or by attempting forcibly to take possession of the ship for his own purposes, such as the transport of sick or of booty, you must declare that as you consider yourself bound to protect your countrymen's liberty and right to unhindered sailing on the sea (a right which can only be limited by those general hindrances applying to all nations' ships in time of war), it is your duty, on behalf of Danish vessels, seriously and earnestly to protest against every act which exceeds these limits.

Should this remonstrance not be attended to, you will at once make a formal protest against the proceedings of such foreign man-of-war, in which protest you will, besides giving notice that you consider that his mode of procedure is unauthorized, and a breach

Denmark's recognized neutrality, hold him responsible for the consequences of such an act. In every case the master or owner of the merchantman shall receive full compensation and indemnity for the loss of property or time occasioned thereby. You will protect Danish trade everywhere, and in every case against privateers, and, if necessary, use force.

The object of these present instructions is to give you decided rules for your guidance in certain cases; but the department has likewise hereby intended to give you a clue for action in all possible unforseen contingencies, in which it will be your duty to act with tact and care, together with gravity and decision. As a rule for such unforeseen cases, the department advises you the strictest neutrality, by abstaining from every sign of partiality for either the one or the other belligerent, be it either by word or deed. You must take care to have respected the Danish neutrality rights and the keeping of good order within the territories, showing every external sign of politeness and consideration in conformity with what the usages of ships of war require or call for.

TRADUCTION du § 76 du Code Pénal Civil du 10 Février 1866.

Celui qui sans y être autorisé par le Roi, entreprendrait de recruter des hommes pour servir dans une armée étrangère est puni de travaux forcés jusqu'à 6 ans, si le Royaume est engagé dans une guerre, et, si tel n'est pas le cas, d'une peine pouvant aller depuis deux mois de simple réclusion jusqu'à 2 ans de travaux forcés.

Le sujet qui sans la permission du Roi s'engagerait en temps de guerre au service d'une puissance étrangère n'étant pas en guerre avec le Danemark est possible de prison, ou, suivant la nature du cas, de travaux forcés jusqu'à l'année.

L'acte de recrutement est accompli depuis le moment où un individu est accepté pour le service étranger.

FRANCE.—No. I.

(Received from Her Majesty's Embassy at Paris.)

REPORT from M. Treitt, Counsel to the Embassy.

A l'honorable Monsieur Julian Fane, Ministre de S. M. B. à Paris.

MONSIEUR LE MINISTRE,

PAR votre lettre du 16 Février 1867, vous avez bien voulu me demander quels sont les lois, règlements, et autres moyens dont est armé le Gouvernement français pour empêcher en ses possessions les actes dont des belligérants pourraient se plaindre comme une violation des droits et devoirs de la neutralité.

Je m'empresse de vous répondre que les seuls textes applicable à la matière sont les articles 84 et 85 du Code Pénal, ainsi conçus :—

" Art. 84. Quiconque aura, par des actions hostiles non approuvées par le Gouvernement exposé l'Etat une déclaration de guerre, sera puni du bannissement, si la guerre s'en est suivie, de la déportation.

" Art 85. Quiconque aura par des actes non approuvés par le Gouvernement exposé des français à essuyer des represailles, sera puni du bannissement."

Vous voudrez bien remarquer la généralité des ces expressions, *quiconque, actions hostiles;* le Législateur n'a pas voulu définir ce qu'il faillait entendre par *actions hostiles,* il en a laissée *l'appréciation souveraine aux juges.*

Il ne s'agit point dans les articles 84 et 85 du Code Pénal, des machinations et manœuvres au profit d'une puissance étrangère, et ayant pour objet de provoquer des hostilités. Ces machinations pratiquées dans une intention et un but criminels, rentrent dans les différentes espèces de trahison, les quelles sont punies par les articles 76 à 83 du même code. Les articles 84 et 85 s'appliquent aux simples cas d'imprudence, de négligence, d'erité, de négligence ; c'est moins l'intention que le fait matériel qui est puni. La loi ne voit que *le résultat ;* ainsi : "La France a-t-elle été exposée à une déclaration de guerre, la guerre a-t-elle été déclarée ? Les Français ont-ils été exposés à des représailles ?" Ces seules questions résolues affirmativement entraineront l'application d'une des peines si sévères prononcées par la loi et en outre le paiement de dommages-intérêts qui peuvent toujours être réclamés.

La gravité des circonstances le veut ainsi : même l'on avait proposé la peine de mort. Mais le législateur a jugé que la peine de la déportation suffisait pour arrêter la prudence des citoyens dans leurs actes qui peuvent toucher à des belligérants (séance du Conseil d'Etat du 9 Janvier 1810.)

Il faut donc trois conditions pourqu'il y ait lieu à application des articles 84 et 85 du Code Pénal :

1°. Que l'action soit hostile.

2°. Que l'action n'ait pas été approuvée par le Gouvernement.

3°. Que la France a été exposée à une déclaration de guerre ou des Français exposés à des représailles.

Je précise ces trois circonstances parceque c'est le pouvoir judiciare seul qui est appelé à les résoudre et à décider de la culpabilité.

Si les juges décident que telle action n'est point une action hostile, et par conséquent non-violatrice de la neutralité, le Gouvernement devra respecter cette décision et pourra l'opposer au belligérant qui se plaindrait.

Si devant les juges l'accusé excipait d'une approbation, soit tacite, soit expresse par le Gouvernement, l'action incriminée ne pourrait plus être punie.

Enfin, si l'action hostile n'avait pas pour conséquence des représailles ou une eventualité de guerre, elle cesse d'être criminelle.

Comme on les voit ces articles dégagent beaucoup la responsabilité du Gouvernement vis-à-vis d'un belligérant. Ils ont pour but, comme l'a dit un illustre magistrat, de sauvegarder la moralité et la dignité nationale. Dans l'antiquité on livrait les coupables ou prétendus coupables et on les abandonnait à la vengeance de la partie plaignante, aujourd'hui il n'en peut plus être ainsi, mais on a cherché des moyens pour donner satisfaction aux plaintes. C'est là que se trouve le principe des articles 84 et 85, car si ces articles n'existaient point on ne pourrait faire droit à de légitimes réclamations et il n'y aurait jamais que la guerre comme dernier argument.

Il n'y a que trois exemples marquants dans les annales de la jurisprudence de poursuites exercées en vertu des articles 84 et 85 du Code Pénal.

En 1824 un capitaine Français commandant un navire colombien avait enlevé un navire sarde et exposé les Français à des represailles.

En 1831 des individus habitant la frontière sont allés attaquer un poste des douanes sardes.

En 1834 des banquiers ont fait un emprunt et des fournitures d'equipement et de munitions au profit de Don Carlos engagé dans une guerre civile contra le Gouvernement espagnol.

Il ne faut pas s'étonner si ces cas sont si rares, les actes violateurs de la neutralité consistent généralement dans les livraisons d'engins et d'instruments de guerre. Or, en France les poudres et les armes de guerre ne jouissent point de la liberté commerciale et industrielle du droit commun ces deux objets sont sous la surveillance rigoureuse du Gouvernement et il est fort difficile que l'on puisse armer des navires ou bien faire voyager ou effectuer des dépôts de poudre et d'armes de guerre sans que le Gouvernement ne soit averti et ne puisse les empêcher.

Il n'y a donc que les articles 84 et 85 qui puissent prévenir les violations de la neutralité, j'ai parcouru tout l'arsenal de nos lois ainsi que les auteurs qui ont traité de cette question ; j'ai examiné les lois concernant les prises maritimes, la piraterie et la traite des negres, je n'ai rien trouvé concernant votre question laquelle n'a trait qu'au droit privatif français relatif aux violations de la neutralité sur le territoire de la France et qu'il ne faut pas confondre avec les règles générales ou du droit des gens concernant la neutralité.

A ce sujet il a été dit avec raison que souvent un fait grave d'hostilité n'amenera pas la guerre quand les deux pays seront en bonnes relations mais que souvent aussi le fait le plus simple peut apporter les plus sérieuses complications quand il y a des sentimens hostiles d'une part ou d'autre.

C'est donc par le résultat des actions incriminées que l'on applique les articles 84 et 85 ; cela est contraire aux notions ordinaires du droit pénal, car on dit communément que l'intention seule constitue le crime.

D'autres nations ont des dispositions analogues dans leurs lois pénales, l'article 136 du code prussien punit les nationaux qui exposent leur compatriotes à des represailles, et l'article 37 du Code du Brésil punit d'un emprisonnement d'une à 12 années celui qui compromet la paix de l'état et expose les Brésiliens à des represailles en dehors des cas de trahison qui sont comme dans la loi Française punis des peines les plus fortes.

Agréez,
Paris le 20 Février 1867. (Signé) TREITT.

A l'honorable M. Julian Fane, Ministre plénipotentiare de S.M.B.

Monsieur le Ministre,

Conformément à votre lettre de hier soir je m'empresse de vous adresser le texte des lois visées dans la déclaration de neutralité du Gouvernement français du 10 Juin 1861.

Je ne vous les avais point données dans mon avis du 20 Février dernier, parceque, sauf l'ordonnance sur la marine de 1681, ils ne touchent pas directément les violation de la loi de neutralité ; et puis je tenais a être court afin d'être lu et compris. Ce sont là les motifs qui m'ont déterminé à ne citer que l... articles 84 et 85 du Code Pénal dont les term... généraux comprennent tous les cas de violation de ... neutralité.

Je n'avais pas à citer non plus la déclaration d... neutralité du 10 Juin 1861, le Gouvernement françai... a dû la notifier officieusement au Gouvernement de l... Reine.

Quant aux faits relatifs à l'Olynde, au Rapahannoc... et autres corsaires du Sud, ces faits avaient été l'objet... de communications assez nombreuses avec Lord Cow... ley ; la presse les avait d'ailleurs signalés et je pensai... qu'ils étaient parfaitement connus au Foreign Office.

Je vais faire des recherches pour savoir ce qui es... advenu de chacun des corsaires signalés en Franc... soit à l'état de construction seulement, soit à l'éta... naviguant et combattant ou pillant.

Dèsque j'aurai pu recueiller mes renseignement... je m'empresserai de vous les transmettre ; mais dès ... présent je crois pouvoir vous dire que, aucune de ce... affaires de corsaires du Sud n'a été l'objet d'un déba... retentissant et que toutes ont disparu de l'attentio... publique sans le moindre bruit.

La déclaration de neutralité de la France du 10 Jui... 1861 admet encore les corsaires pendant vingt-quatr... heures dans les ports français. Plusieurs puissance... neutres ont été plus loin ; elles on déclaré, dès l'anné... 1854, à l'occasion de la guerre de Crimée, quelles n... recevraient dane leurs ports les corsafres belligéran... que dans le cas d'absolue nécessité.*

Il y a là un progrès de la civilisation en attendan... l'abolition universelle de la course.

Agréez, monsieur le ministre,
Mon entier devouement,
TREITT.

FRANCE.—No. II.

(Received from Her Majesty's Embassy at Paris.)

M. de Moustier, Minister for Foreign Affairs, to Mr. Fane.

MONSIEUR, Paris, le 26 Février 1867.

PAR votre lettre du 16 de ce mois, vous me priez de vous faire connaitre les lois et les réglements qui existent en France au point de vue des actes que les belligérents peuvent considérer comme une violation des devoirs de la neutralité, la Commission nommée par la Reine pour l'examen des lois de neutralité désirant d'obtenir des informations à ce sujet.

Je m'empresse de répondre à cette communication.

A proprement parler, il n'y a pas de disposition dans la législation Française qui marque d'une manière précise les limites de la neutralité à observer entre deux puissances etrangères qui sont en état de guerre, les questions de cette nature étant d'un caractère mixte et trouvant leur solution dans les principes généraux du droit international.

Il y a cependant dans le Code Pénal Français deux dispositions qu'on peut invoquer comme se référent à la neutralité : ce sont les articles 84 et 85 qui punissent les actes commis par des individus qui exposeraient l'Etat à une déclaration de guerre on les Français à éprouver des représailles.

L'article 21 du Code Napoleon interdit aussi à tout Français de prendre du service à l'etranger sans autorisation.

A un point de vue plus spécial on peut citer ; l'article 3 de la roi du 10 Avril 1825 qui punit comme pirate le Français qui prend Commission d'une puissance étrangère pour commander un navire armé en course ;

L'article 67 du décret disciplinaire sur la Marine Marchande du 24 Mars 1852 qui interdit au marin Français de prendre du service sans autorisation sur un navire étranger ;

Certains paragraphs des articles 313, 314, et 315 du Code de Justice Militaire pour l'armée de mer relatifs à la désertion à l'étranger.

L'Ordonnance du 12 Juillet 1847, et la loi du ... Juillet 1860 sur les armes de guerre.

L'article 2 de la loi du 16 Mai 1863, qui prohibe ... sortie des munitions de guerre.

J'ai l'honneur de vous transmettre ci-joint le tex... des dispositions sus mentionées.

Agréez, &c.
M. Julien Fane. (Sd.) MOUSTIER.

No. 13,715. Ordonnance du Roi concernant la fabric... tion ou la confection des Armes et Munitions ... guerre pour l'usage des Navires le Commerce.

A Neuilly, le 12 Juillet 1847.

Louis-Philippe, Roi des Français, à tous présents ... à venir, salut :

Vû les lois des 22 Août 1791, 4 Germinal au I... 19 Thermidor au IV., 24 Mai 1834, et 6 Mai 1841 ;

Notre Conseil d'État entendu ;

Sur le rapport de notre Ministre Secrétaire d'Ét... au Département de la Marine et des Colonies ;

Nous avons ordonné et ordonnons ce qui suit :

Art. 1er. Conformément à l'article 3 de la loi du ... Mai 1834, tout individu qui voudra fabriquer ou co... fectionner des armes de guerre, pour l'usage d... navires de commerce, devra en obtenir préalableme... l'autorisation de notre Ministre Secrétaire d'État ... Département de la Guerre, quant aux armes portative... et de notre Ministre Secrétaire d'État Département ... la Marine et des Colonies, quant aux bouches à feu ... aux munitions.

La demande en autorisation énoncera le nombre ... la quantité, l'espèce et le calibre des armes ou munitio... de guerre que l'on se proposera de fabriquer ou co... fectionner.

Les maîtres de forges devront joindre à leur demand...

* Ordonnance du Sénat de Hambourg du 26 Avril 18... Ordonnance du Sénat de Lubeck du 28 Avril 1854, de Lube... à la même date ; du Gouvernement d'Oldenbourg du 20 Av... 1854 ; du roi de Suède 8 Avril ; du Danemarck 20 Avril ; ... Mecklenbourg 26 Avril ; du Hanovre 5 Mai ; des Deux Sici... 17 Mai ; de Toscane 3 Juin ; de Belgique 25 Avril ; Des ... Sandwich 17 Juillet 1854.

lans cotés des bouches à feu, et faire connaître
ce de fusion et de moulage qu'ils se proposeront
ployer.

Lorsque l'autorisation sera accordée, il en sera
avis au préfet du département où se trouveront
les établissements ou ateliers dans lesquels seront
qués ou confectionnées les armes ou munitions de
e auxquelles se rapportera cette autorisation.

Les armes et munitions de guerre destinées aux
es de commerce ne pourront sortir des ateliers de
ation, ni être expediées aux ports de destination,
vertu d'une autorisation du préfet du départe-

utorisation du préfet énoncera le nombre ou la
ité et la nature des objets expédiés, l'itinéraire à
e et le délai dans lesquel ils devront être transmis
r destination ; les conducteurs du chargement
t tenus de produire l'autorisation à toute réqui-

A leur arrivée au port de destination, les armes
erre seront placées dans au magasin ou dépôt de
rine, ou de l'un des autres services publics de
; elles y resteront sous la surveillance du chef de
e.

Avant d'être livrées au commerce, les armes seront
vées conformément aux instructions qui seront
ées par notre ministre secrétaire d'état au départe-
de la guerre pour les armes portatives, et par
ministre secrétaire d'état au département de la
ne et des colonies pour les bouches à feu.

La réception ou le rejet des armes de guerre sera
oncée par l'officier qui aura procédé aux épreuves ;
s de rejet, il sera délivré expédition du procès-
l au fabricant ; s'il y a réclamation de sa part, il
ra référé au ministre, qui statuera définitivement.

Les frais de visite, d'épreuve, de reception, de
port, et d'entretien des armes seront à la charge
abricants.

s frais déplacement de l'officier d'artillerie qui
édera à l'épreuve et des agents sous ses ordres
t supportés par l'état.

Aucune arme de guerre ne pourra être extraite
dépôt, que lui sera affecté qu'en vertu d'une
risation du chef du service de la marine, à qui le
cant ou son représentant devra préalablement
rer les noms des armateurs des navires pour
uels ladite arme sera destinée.

ne expédition de l'autorisation sera immédiatement
mise par le chef du service de la marine au receveur
douanes du port d'armement.

Les cartouches et autres munitions de guerre
t placées dans le dépôt mentionné à l'article 4, et
ourront en être retirées qu'au départ du navire, et
conformant aux dispositions indiquées ci-après.

. Aucune arme de guerre ne pourra être embarquée
es navires du commerce qu'en vertu d'une autori-
n du chef du service de la marine du port d'arme-
t, laquelle déterminera aussi, en raison de la nature
la durée présumée du voyage, les quantités de
itions qui pourraient être embarquées.

. Le chef du service de la marine veillera à ce
ne soit embarqué sur chaque navire que le nombre
mes de guerre que comporteront sa force et celle de
ipage, et à ce que les bouches à feu soient réelle-
t montées en batterie.

2. Les armateurs souscrivont, entre les mains du
veur des douanes du port d'embarquement, l'engage-
t cautionné, de rapporter et de représenter les
es et munitions de guerre qu'ils auront été autorisés
mbarquer, sauf par eux à justifier, ou moyen de
ès-verbaux signés par tous les officiers et au moins
s des principaux marins d'abord, de la perte de tout
artie des armes ou de l'emploi de tout ou partie des
itions embarquées ; l'accomplissement de cette
sera constaté au moyen d'une vérification
sera faite par les soins des agents de la marine,
urremment avec ceux des douanes, au retour du
ire.

A cet effet, le rôle d'équipage devra toujours men-
ner exactement le nombre, l'espèce, le calibre, et
aleur des armes, ainsi que la quantité, l'espèce, et
la valeur des munitions qui auront été embarquées à l'armement.

13. Au désarmement du navire, les armes et munitions de guerre existant à bord entreront au dépôt dont il est fait mention à l'article 4 ; néanmoins le chef du service de la marine pourra autoriser l'armateur ou son représentant à conserver l'artillerie à bord.

14. Tout infraction aux dispositions de l'article 12 sera poursuivie conformément aux lois sur l'exportation des armes et munitions de guerre.

Dans ce cas, les poursuites auront lieu à la diligence des agents de l'administration des douanes.

15. Toute infraction aux autres dispositions contenues dans le présente ordonnance, notamment aux articles 1, 3, 4, 8, 9, 10, et 13, sera poursuivie conformément à la loi du 24 Mai 1834.

16. Nos ministres secrétaires d'état aux départements de la guerra, de la marine et des colonies, et des finances, sont chargés, chacun en ce qui le concerne de l'exécution de la présente ordonnance.

Donné à Neuilly, le 12 Juillet 1847.

(Signé) LOUIS-PHILIPPE.

Par le Roi : le Pair de France, Ministre Secrétaire d'État de la marine et des colonies,

(Signé) DUC DE MONTEBELLO.

N°. 7853. Loi sur la Fabrication et le Commerce des Armes des Guerre, du 14 Juillet 1860.

Napoléon, par la grâce de Dieu et la volonté nationale, Empereur des Français, à tous présents et à venir, salut :

Avons sanctionné et sanctionnons promulgué et promulgnons ce qui suit :

LOI.

EXTRAIT DU PROCÈS DU CORPS LÉGISLATIF.

Le Corps Législatif a adopté le projet de loi dont la teneur suit :

Titre I. De la fabrication et du Commerce des armes ou des pièces d'armes de guerre.

Art. 1er. Toute personne peut se livrer à la fabrication ou au commerce des armes ou des pièces d'armes de guerre, en vertu d' une autorisation donnée par le ministre de la guerre, et sous les conditions déterminées par la loi ou par les règlements d'administration publique.

Les armes ou les pièces d'armes de guerre fabriquées dans les établissements autorisés ne peuvent être destinées qu'à l'exportation, sans le cas de commandes faites par le ministre de la guerre pour le service de l'État.

2. Les armes de guerre sont celles qui servent ou qui ont servi à armer les troupes Françaises ou étrangères.

Peut être réputée arme de guerre, toute arme qui serait reconnue propre au service de guerre et qui serait une imitation réduite ou amplifiée d'une arme de guerre.

Les armes dites *de bord* ou *de troque* sont considérées comme armes de guerre et soumises aux mêmes règles.

3. L'autorisation mentionnée en l'article 1er ne peut être retirée, par le ministre de la guerre, que lorsque le fabricant ou le commerçant à encouru une condamnation, devenue définitive, soit par application des articles 13 § 2, 14 § 2, 15, et, 16 de la présente loi, soit pour contravention à celle du 24 Mai 1834, soit pour crimes et délits prévus,

1°. Par les articles 86 à 101, 209, 210, 211, 215, et 216 du Code Pénal ;

2°. Par la loi du 7 Juin 1848, sur les attroupements ;

3°. Par les articles 1 et 2 de la loi du 27 Juillet 1849 ;

4°. Par les articles 1, 2, and 3 de de la loi du 27 Février 1858.

4. Tout fabricant ou commerçant autorisé est tenu d'avoir un registre, coté et paraphé à chaque feuille par le maire, sur lequel sont inscrites, jour par jour,

l'espèce et la quantité des armes ou des pièces d'armes de guerre qu'il fabrique, achete ou vend, avec indication de leur destination et des noms et domiciles des vendeurs ou des acheteurs.

Le maire vise et arrête ce registre au moins une fois tous les mois ; en cas d'absence ou d'empêchement, il peut se faire suppléer par le commissaire de police.

5. Le ministre de la guerre, et en cas d'urgence, les généraux commandant les divisions ou les subdivisions militaires prescrivent, relativement aux dépôts d'armes ou de pièces d'armes de guerre qui existent dans les magasins des fabricants ou commerçants, les measures que peut exiger l'intérêt de la sureté publique.

6. Tous les canons d'armes de guerre destinés au commerce extérieur sont soumis à des épreuves constatées par l'application d'un poinçon.

Ces canons reçoivent, en outre, une marque dite d'exportion.

Titre II. De l'importation, de l'exportation, et du transit des armes ou des pièces d'armes de guerre.

7. Toute importation d'armes de guerre et de canons ou d'autres pièces d'armes de guerre est interdite, à moins qu'elle ne soit autorisée ou ordonnée par le ministre de la guerre.

8. Des décrets déterminent ceux des entrepôts de douane dans lesquels les armes ou les pièces d'armes de guerre de provenance étrangère peuvent être exclusivement déposées.

Ces armes ou ces pièces d'armes peuvent, dans l'intérêt de la sûreté publique, être soumises aux mesures autorisées par l'article 5.

9. L'exportation des armes ou des pièces d'armes de guerre est libre, sous les conditions determinées par la loi ou par les règlements d'administration publique.

Néanmoins un décret impérial peut interdire cette exportation par une frontière, pour une destination et pour une durée déterminées.

Des décrets désignent les bureaux de douane par lesquels l'exportation peut s'opérer.

Quand l'exportation est interdite pour certaines destinations, les expotrateurs doivent, sous les peines portées par l'article 4 dn titre III. de la loi due 22 Août 1791, justifier de l'arrivée des armes à une destination permise, au moyen d'acquits-à-caution qui sont délivrés, au départ, par les soins de l'administration des douanes, et qui sont déchargés, à l'arrivée, par les agents consulaires de France.

10. Les armes ou les pièces d'armes de guerre ne peuvent transiter, ni être expédiées en mutation d'entrepôt ou en re-éxportation, sans un permis du ministre de la guerre.

Si l'exportation est interdite pour une destination, les permis de transit délivrés pour cette destination, antérieuremont au décret qui prononce l'interdiction, sont annulés de droit.

11. L'importation, dans les cas où elle est autorisée ou ordonnée par le ministre de la guerre, l'exportation et le transit, ainsi que la circulation et le dépôt des armes ou des pièces d'armes de guerre, dans le rayon des frontières, restent soumis aux disposition législatives ou réglementaires sur les douanes.

Titre III. Dispositions pénales.

12. Quiconque, sans autorisation, se livre à la fabrication, ou au commerce des armes ou des pièces d'armes de guerre, est puni d'une amende de seize francs à mille francs et d'un emprisonnement d'un mois à deux ans.

Les armes ou pièces d'armes de guerre fabriquées ou exposées en vente sans autorisation sont confisquées.

Les condamnés peuvent, en outre, être placés sous la surveillance de la haute police pendant un temps qui ne peut excéder deux ans.

En cas de récidive, ces peines peuvent être portées jusqu'au double.

13. Le fabricant ou le commerçant qui ne s'est pas conformé aux dispositions de l'article 4 de la présente loi est puni d'une amends de seize francs à trois cents francs et d'un emprisonnement de six jours à trois mois.

En cas de récidive, le peine peut être porté jusqu'au double.

14. Tout fabricant ou commerçant qui ne s'est pa conformé aux dispositions de l'article 6, est puni d'un amende de seize francs à trois cents francs. Les canon saisis sont confiqués.

En cas de récidive, l'amende peut être porté jusqu'au double.

15. La contrefaçon du poinçon d'épreuve ou d poinçon d'exportation et l'usage frauduleux d poinçons contrefaits sont punis d'une amende de cen francs à trois mille francs et d'un emprisonnement d deux ans à cinq ans.

16. Est puni d'une amende de seize francs à cin cents francs et d'un emprisonnement d'un mois a deu ans quiconque, s'etant indûment procuré les vra poinçons mentionnés en l'article précédent, en a fai usage.

17. Dans tous les cas prévus par la présente loi, pourra être fait application de l'article 463 du Cod Pénal.

Titre IV.—Dispositions Générales.

18. Des règlements d'aministration publique dé terminent notamment les formes des demand d'autorisation en matière de fabrication et de commerc des armes de guerre ; le régime et le tarif des épreuve et des marques ; les formalités auxquelles droit êt assujetti le transport des armes à l'interieur ; enfi toutes les mesures relatives à la surveillance de fabrication et du commerce des armes de guerre.

19. Il n'est dérogé ni à la loi due 24 Mai 1834, aux lois et règlements concernant les armes de chas et de luxe et les armes prohibées.

20. Sont abrogées toutes dispositions contraires celles de la présente loi.

Délibéré en séance publique, à Paris, le 20 Ju 1860.

Le Président,
(Signé) COMTE DE MORNY.

Les Secrétaries,
(Signé) COMTE LOUIS DE CAMBACÉRÈ
COMTE LEOPOLD LETTON,
COMTE JOACHIM MURAT.

EXTRAIT DU PROCÉS-VERBAL DU SÉNAT.

Le Sénat ne s'oppose pas à la promulgation de loi concernant la fabrication et le commerce des arm de guerre.

Délibéré et voté en séance, au Palais du Sénat, 30 Juin 1860.

Le Président,
(Signé) TROPLONG.

Les Secrétaires,
(Signé) A. LAITY,
COMTE DE GROSSOLLES-FLAMARENS.
BARON T. DE LACROSSE.

Vu et scellé du sceau du Sénat :
Le Sénateur Sécretaire,
(Signé) BARON T. DE LACROSSE.

Mandons et ordonnons que les présentes, revêtu du sceau de l'état et insérées au bulletin des lo soient adressées aux cours, aux tribunaux et a autorités administratives, pour qu'ils les inscrivent s leurs registres, les observent et les fassent observer, notre ministre secrétaire d'état au département de justice est chargè d'en surveiller la publication.

Fait au Palais de Saint-Cloud, le 14 1860.

(Signé) NAPOLÉON

Par l'Empere

Le Ministre d'État
(Signé) ACHILLE FOULD.

Vu et scellé du grand sceau :
Le garde des sceaux, Ministre Secrétaire d'Etat Département de la Justice,
(Signé) DELANGLE.

FRANCE.—No. III.

(Received from Her Majesty's Embassy at Paris.)

REPORT from M. Treitt, Counsel to the Embassy.

A l'honorable M. Julian Fane, M. P. S. M. B.

. LE MINISTRE,

CONFORMEMENT à votre lettre du 25 Février 67, j'ai déjà eu l'honneur de vous remettre les textes la loi dont le Gouvernement Français est armé pour mpêcher ses nationaux de violer les lois de la neualité vis-à-vis des belligérants; je viens aujourd'hui us dire l'état des procédures et des mesures adminisatives qui ont surgi à l'occasion de six navires qui t été construits en France, et qui étaient destinés devenir des corsaires confédérés.

Le 15 Avril 1863 un contrat a été signé entre M. rman, constructeur maritime à Bordeaux et député Corps Legislatif, d'une part, et d'autre part M. mes Dunwold Bullock, agissant par mandat resté alors cret pour le compte du Gouvernement confédéré.

Les conventions portaient que s'agissant d'établir ne communication régulière par bateaux-à-vapeur tre Shang-hai, Osaca, Yeddo, et San Francisco, ssant par la détroit de Van Diemen, M. Arman ngageait à construire quatre steamers de très-grande tesse, portant 12 jours de combustible et pouvant cevoir un armement de 12 à 14 pièces de canon afin pouvoir protéger leurs passagers et leurs cargaisons ns ces mers lointaines, en un mot, ils devaient réunir s prindipales conditions des corvettes de guerre de la arine Francaise.

Mr. Arman devait construire lui-même deux des timens à Bordeaux à 400 chevaux de force et de 1,550 nneaux. Il était autorisé à confier la construction s deux autres bâtimems à M. Voruz, constructeur à antes, et aussi député au Corps Législatif. Les quatre timens devaient être prêts à faire leurs essais dans délai de 10 mois. Le prix de chacun a été fixé à 800,000 francs, payables per cinquèmes pendant la nstruction. L'artillerie, les armes, les projectiles, s poudres restaient à la charge de M. Bullock.

Le 15 Juillet 1863 il fut signé un second contrat tre les mêmes personnes pour la construction de deux liers à vapeur cuirassés et munis de deux blokhaus indés. Les conditions du contrat étaient les mêmes. ce n'est le prix qui à été stipulé pour chaque bélier 2,000,000 francs. Le banquier de M. Bullock était . Erlanger. De plus, la destination de ces deux liers n'était pas indiquée.

La construction commença immédiatement à Boreaux et à Nantes, chez MM. Jollet et Babin et aussi ez MM. Dubigeot et Fils. Les machines furent nfiées à MM. Mazeline et Cie. au Hâvre.

Je cite tous ces noms parceque plus-tard on les ouvera englobés dans un procès que le Président des tats-Unis a intenté à ces différentes personnes.

Les navires furent rapidement achevés, et M. Arman, nformément à l'ordonnance du 12 Juillet 1847, ddressa au Ministre de la Marine pour obtenir utorisation d'armer les quatre navires de 12 à 14 anons, navires, disait-on, destinés à une ligne de eamers dans les mers de Chine et la Mer Pacifique. 'autorisation fut accordée le 6 Juin 1864; deux des avires avaient été lancés à Nantes en Avril. Mais lors intervient M. Dayton, Ministre des Etats-Unis. 'ar ses actives démandes il apporta aux Ministres de Marine et des Affaires Etrangères la preuve que les avires commandés à M. Arman par M. Bullock taient destinés à devenir des corsaires du Sud proablement; le Gouvernement fit aussi une enquête, et 22 Octobre le Ministre de la Marine, malgré les énégations apportées dans toute cette affaire, retira MM. Arman et Voruz l'autorisation qu'il leur avait récédemment donnée d'armer les navires.

Qu'allaient devenir ces navires? Les amis de l'Amérique du Nord s'en inquiétaient alors considéablement et craignaient qu'á l'aide de ventes fictives ls ne quittassent la France pour arborer en pleine mer pavillon confédéré, puisque c'est ainsi que "l'Alaama," "la Florida," "la Géorgia," et "le Rapahannock" avaient trompé la vigilance des autorités Anglaises.

Il s'était établi une polémique assez vive dans la Presse à ce sujet.

Voici quel a été le sort des six navires dont la construction avait été confiée á M. Arman, avec le concours des personnes ci-dessus dénommées, je crois que mes informations sont exactes.

"Le Yeddo" et "le Osaca," construits a Bordeaux, ont été vendus à la Prusse.

"Le Shanghai" et "le San Francisco" ont été vendus en Pérou.

L'un des béliers, "le Chéops," a été vendu à la Prusse, l'autre "le Sphinx," avait êté vendu au Danemark et conduit à Copenhague.

Mais le Gouvernement Danois (sous j'ignore quel prêtexte) refusa d'en prendre livraison.

On lui donna alors le nom "d'Olynde," et muni d'un équipage Danois, pourvu de papiers de bord réguliers en destination de Bordeaux le navire fut ramené sur les côtes de France.

Il s'arrêta dans la petite ile d'Houat, à quelques lieues en mer à l'ouest de Quiberon. Là il fut accosté par deux navires, l'un lui apporta une provision de charbons; l'autre "The City of Richmond," le pourvut de canons, de munitions, et d'un équipage confédéré. "L'Olynde" alla successivement a la Corogne, à Lisbonne, aux Azores, à Cuba, et à la Havanne ou il tomba aux mains des Américains du Nord.

Celle est l'histoire des six corsaires confédérés commandés en France; les agents Américains ne les ont point perdus de vue pendant un jour, le Gouvernement Français a fait droit à leurs dénonciations, et c'est ainsi que le Gouvernement Américain n'a pas jusqu'à présent adressé de réclamations à la France. Celle-ci même a surveillé très-attentivement "le Rapahannock" pendant le temps qu'il est resté dans les eaux de Calais, ville d'où il s'est inopinément enfui. La France n'a donc pas à répondre des faits du "Rapahannock," qui figure dans le chapitre des réclamations concernant l'Angleterre.

Mais si le Président des Etats-Unis ne s'est pas adressé au Gouvernement Français, il a intenté directement un procès à MM. Arman, Voruz, Jollet, Barbin, Dubrigeon, Marzeline, Erlanger à tous ceux enfin qui ont pris une part quelconque à la construction ou mise en état des six navires, *futurs corsaires*. Il leur réclame tant comme répétition que comme dommages intérêts une somme de 2,880,000 francs, qu'ils auraient reçue à valoir sur le prix de navires commandés.

Son action est fondée sur les trois articles suivants du Code Napoléon:

Art. 1,376.—Celui qui reçoit par erreur ou sciemment ce qui ne lui est pas dû, s'oblige à le restituer à celui de qui il l'a indûment reçu.

Art. 1,382.—Tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.

Art. 1,383.—Chacun est responsable du dommage qu'il a causé, non seulement par son fait, mais encore par sa négligence ou son imprudence.

Le premier de ces trois articles statue sur le droit de réclamer ce qui a été payé sans être dû. Or le contrat entre M. Arman et M. Bullock étant nul comme contraire à la loi Française, il n'était rien dû en vertu de ce contrat, et ce qui a été payé doit être restitué.

Quant aux deux autres articles, ils réglent le principe des dommages, intérêts dûs par le fait ou l'imprudence des défendeurs.

Telle sera, dit-on, l'argumentation sur laquelle s'appuiera la demande du Président des Etats-Unis.

Mais jusqu'à présent le procès en est encore aux préliminaires.

La loi Française autorise les défendeurs à réclamer des demandeurs *quand ils sont étrangers* la caution *judicatum solvi* pour assurer le paiement des frais du procès.

Devant le tribunal de première instance MM. Arman et consortsont demandé le dépôt de 150,000 francs pour a caution *judicatum solvi*, à raison des frais du fisc et lautres très-considérables que le procès occasionera.

M. le Président a offert de déposer seulement 5,000 francs.

Mais le tribunal a maintenu le chiffre demandé de 150,000 francs.

M. le Président des Etats-Unis a interjeté appel de cette décision.

La Cour Impériale jugeant en appel a également maintenu les 150,000 francs.

Maintenant le Président des Etats-Unis ne pourra donner suite à son procès qu'après avoir déposé cette somme dans une caisse publique.

Ce procès ne sera guères plaidé avant trois mois.

Agréez, etc.,
(Signé) TREITT.

Paris, le 3 Mars 1867.

FRANCE, No. IV.

MY LORD, Paris, December 4, 1867.

I HAVE the honour to transmit to your Lordship a further report from M. Treitt on the subject of the action brought by the Government of the United States in the French Courts, against persons concerned in equipping armed vessels for the so-called Confederate States.

I have the honour to be, &c.

The Lord Stanley, M.P. (Signed) LYONS.

A son Excellence Lord Lyons, Ambassadeur de S.M.B. à Paris.

MILORD,

A la date du 20 Février et 13 Mars 1867 j'ai eu l'honneur de transmettre au Foreign Office les dispositions de la loi de France contre les violations de la neutralité, ainsi que des renseignements sur le sort des différents corsaires que les Etats du Sud avaient armés ou essayé d'armer pendant la guerre de la sécession en Amérique.

J'avais annoncé en même temps que les Etats-Unis devaient intenter un procés à plusieurs armateurs Français, pour les faire condamner par les tribunaux de France à restituer au Gouvernement de Washington tout l'argent que ces armateurs ont touché des agents du Sud, et de plus, à lui payer des dommages intérêts.

Ce procès est en ce moment pendant devant le tribunal de première instance à Paris, et il sera probablement plaidé dans le courant de l'année prochaine.*

Je viens aujourd'hui mettre en relief les arguments sur lesquels les Etats-Unis basent leur action.

La demande se formule ainsi :—"Dès le commencement des hostilités entre le Nord et le Sud, le Gouvernement Français à affirmeé sa neutralité par une déclaration insérée au Moniteur du 10 Juin 1861, par laquelle déclaration il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque; pour faire la course maritime, *ou de concourir* D'UNE MANIÈRE QUELCONQUE *à l'équipement ou à l'armement d'un navire de guerre ou corsaire de l'une des deux parties.*"

Les contrevenants à ces défenses encourront les dispositions prévues par les lois, entre autres, les dispositions des articles sévères 84 et 85 du Code Pénal Français.

Une semblable déclaration avait été faite par l'Angleterre.

Néanmoins, les Confédérés du Sud trouvérent en Angleterre et en France des gens fort empressés à violer les lois de leur patrie. Le Sud envoya en Angleterre les Capitaines Maury et Bullock sous la direction desquels furent armés et lancés sur les mers les corsaires l'Alabama et la Floride; mais le Gouvernement Anglais sur les énergiques réclamations des Etats-Unis, après avoir fait saisir l'Alexandra à Liverpool et le Pampero à Glasgow, finit par déclarer qu'il ne laisserait pas prendre la mer à deux béliers blindés qui se construisaient à Liverpool, et ferma ainsi les chantiers et les arsenaux de la Grande Bretagne aux Confédérés. Ceux-ci alors s'adressèrent à la France. Ils firent des traités avec M. Lucien Arman, grand constructeur à Bordeaux et membre du Corps Législatif.

Les Etats-Unis reprochent vivement à ce député d'avoir, dans les discussions au Corps Législatif, engagé le Gouvernement Français à ne pas reconnaître le blocus des côtes du Sud et d'avoir ainsi voulu couvrir ses intérêts personnels du voile de l'intérêt politique et commercial de la France.*

En effet M. Arman était vers cette même époque devenu le chef d'une association qui s'engageait à vendre au Sud des navires de guerre. Ces navires, disait-on, étaient destinés à établir une ligne régulière de navigation entre Shanghaï et San Francisco. Le contrat passé entre M. Arman et le Capitaine Bullock est du 15 Avril 1863. M. Arman s'engage à fournir dans un délai de dix mois deux navires; il est autorisé à confier la construction de deux autres navires à M. Voruz, également membre du Corp Législatif. Les deux premiers navires devaient être armés à Bordeaux; les deux autres à Nantes ou plutôt à St. Nazaire.

M. Erlanger, banquier de M. Bullock, intervient au contrat pour en garantir en partie le paiement.

Les Etats-Unis reprochent encore à M. Arman d'avoir le 1 Juin 1863, écrit une lettre au Ministre de la Marine pour lui demander l'autorisation d'armer ces navires et d'avoir sciemment trompé le Ministre en lui donnant l'assurance que ces navires etaient destinés aux mers de la Chine et du Pacifique et d'avoir ainsi frauduleusement surpris l'autorisation gouvernementale qu'il a effet obtenue le 6 Juin 1863. Les Etats-Unis produisent tous les écrits à l'appui de leurs assertions; et toutes les circonstances et toutes les conditions du contrat du 15 Avril 1863 sont parfaitement établies par le texte du traité même et par la présentation des correspondances échangées entre les diverses parties engagées. De plus par une lettre du 12 Juin 1863, M. Arman proposait aux agents du Sud de se charger encore de la confection de six batteries cannonieres blindées; il s'engageait aussi à obtenir les autorisations gouvernementales nécessaires pour l'armement de ces navires.

Tous ces faits avaient jusqu'alors échappé à l'attention du Gouvernement Français, quand, en Septembre 1863, M. Bigelow, Consul Américain à Paris, les signala à M. Dayton, Ministre Plénipotentiare des Etats-Unis en France.

Celui-ci les fit connaître immédiatement au Gouvernement impérial et demanda formellement à M. Drouyn de Lhuys que l'autorisation d'armer les navires accordée à M. Arman par le Ministre de la Marine lui fût retirée.

Ces communications surprirent le Gouvernement Français ainsi qu'il résulte des dépêches de M. Dayton à M. Seward des 11 et 22 Septembre 1863.

Il se fit une échange de correspondances entre le Ministre des Affaires Etrangères et le Ministre de la Marine. Ce dernier déclare "qu'il ne pouvait que s'en rapporter à la declaration de MM. Arman et Voruz, et ne saurait être responsable des opérations illicites qui pourraient être entreprises."

Le Gouvernement Français fit une enquête, MM. Arman et consorts nièrent énergiquement les faits dont l'évidence était cependant indiscutable. Et le 22 Octobre 1863, M. Drouyn de Lhuys écrivait à M. Seward que MM. Armand et Voruz, montraient une *véritable indignation à l'endroit des charges qui pèsent sur eux.*

Quoiqu'il en soit, le Ministre de la Marine notifia à MM. Armand et Voruz qu'il leur retirait l'autorisation

* Le procès est ence moment (mai 1868), sur le point d'être plaidé.

* Discussion de l'adresse, séance du 12 Février, 1863 Moniteur du 13.

r'ils avaient obtenue pour armer les quatre navire
construction à Nantes et à Bordeaux.

Le retrait de l'autorisation ne semble pas avoir
rêté MM. Arman et consorts dans leurs opérations ;
s Agents des Etats-Unis continuèrent leur étroite
rveillance.

M. Arman, en Février 1864, pendant la discussion
l'adresse au Corps Législatif proposa un amende-
ent qui tendait à pousser le Gouvernement Français
rs des voies de la neutralité ; mais cet amendement
t retiré par son auteur.

Dans une dépêche de M. Dayton à M. Seward du
Février 1864, le Ministre Américain à Paris
grette que cet amendement ait été retiré, car cela
t été une excellente occasion de mettre en lumière
utes les circonstances de l'histoire de la construction
s corsaires à Nantes et à Bordeaux.

MM. Arman et consortés pour dégager leur respon-
bilité paraissent avoir affirmé au Ministre des
ffaires Etrangères de France que deux navires
irassés avaient été vendus au Gouvernement Danois ;
. Drouyn de Lhuys le disait à M. Dayton le 4
évrier 1864.

M. Dayton prit des informations à Copenhague.
a réponse du Gouvernement Danois fut négative.

En Avril 1864 pareille communication fut faite à
. Dayton par M. Drouyn de Lhuys, avec cette
fférence que cette fois les mêmes deux navires
aient été vendus à la Suède le 15 Avril 1864 ; le
inistre des Affaires Etrangères de Suède et Nor-
ège démentait le fait dans une dépêche addressée au
inistre des Etats-Unis à Stockholm.

Enfin à la séance du 12 Mai 1864,* du Corps Légis-
tif, l'orateur du Gouvernement donna les assurances
s plus positives que les navires de M. Arman ne
rtiraient pas des ports Français, sans qu'il fut bien
démontré que leur destination n'affecte point les
principes de neutralité que le Gouvernement
Français veut rigoureusement observer à l'égard
des belligérants."

En présence de ces allures si décidées du Gouverne-
ent Impérial les deux navires de Bordeaux, l'Yeddo et
Osaka, furent définitivement vendus et livrés à la
russe en Juin et Juillet 1864.

Les deux navires construits à Nantes, le San Fran-
sco et le Shanghaï, donnèrent lieu à tout autant de
rveillance, de correspondances que ceux de Bordeaux.
ar suite des mesures prises par le Gouvernement
mpérial les contracteurs nantais furent obligés de
s vendre au Gouvernement Péruvien, qui en prit
vraison dans les premiers jours de 1865. M. Voruz
sure avoir remboursé à M. Bullock toutes les sommes
u'il a reçues du Gouvernement Péruvien pour prix
e ces deux navires, et que ces sommes sont égales à
elles qu'il avait lui-même touchées des agents du
ud ; seulement un excédant de bénéfice a été partagé
tre M. Voruz et M. Bullock.

Restaient encore deux béliers blindés avec éperons
ue M. Arman s'était engagé à construire par un
euxième contrat du 16 Juillet 1863, par conséquent
ostérieur au contrat du 15 Avril 1863. Ce sont là
s deux navires qui avaient été déclarés comme
endus successivement au Danemarck et à la Suède.

Voici leur histoire telle que la racontent les Etats-
nis :

L'un d'eux s'appelait le Sphinx. Le 31 Mars 1864,
n mandataire de M. Arman, M. Arnous-Rivière,
ignait un contrat de vente du Sphinx avec le Gouverne-
ent Danois. Le navire devait être livré le 10 Juin
864, mais il ne fut prêt que le 20 Octobre, et le Gou-
ernement Danois, sur le rapport de ses officiers, et
ussi sur le rapport d'un arbitre du tribunal de com-
erce de Bordeaux, refusa définitivement de devenir
uéreur du Sphinx.

M. Arman, sous prétexte qu'il voulait s'en
apporter à la générosité du Gouvernement Danois
pour le prix, obtint l'autorisation d'envoyer le Sphinx
. Il le sortit ainsi du port de Bor-
deaux ; le navire fut envoyé à Copenhague sous
pavillon Français, et reçut le nom de *Stoer Kodder*.

Mais le Gouvernement Danois ne voulut point
acheter (à aucun prix, parait-il), le navire de M.
Arman, et celui-ci dût songer à le ramener en France.
Comme le capitaine et l'équipage Français avaient été
congédiés à Copenhague à l'arrivée du navire, il fallut
le pouvoir d'un équipage Danois, et le même manda-
taire de M. Arman, M. Arnous-Rivière, obtint la
faveur toute exceptionelle de faire partir le navire sous
pavillon Danois, mais seulement pour le voyage de
Copenhague jusqu'à Bordeaux, où les papiers de bord
devaient être remis au consul Danois.

M. Arnous-Rivière partit alors sur le Stoer Kodder,
et après plusieurs relâches vint jeter l'ancre dans les
eaux Françaises devant la petite île d'Houat, voisine
de la presqu'île de Quiberon. Là, le Stoer Kodder
prit le nom d'Olinde, et devint un navire de guerre
pour les Confédérés du Sud. En effet, par les soins
de MM. Dubigeon, de Nantes, qui avaient pris part à
la construction du Shanghaï et du San Francisco,
un remorqueur de St. Nazaire, avait apporté du
charbon à l'Olinde, puis débarqua la majeure partie de
l'equipage Danois à Quiberon, et les officiers à St.
Nazaire.

En même temps un vapeur Anglais apportait à
l'Olinde son artillerie et ses munitions, ainsi qu'un
équipage confédéré. Cet équipage était celui du
corsaire la Florida, le commandant était le Capitaine
Page. Le bélier changea encore une fois de nom et
devint le Stonewall, il se rendit en Espagne au Ferrol.

Ces faits s'étaient passées dans les derniers jours
de Janvier 1865 ; le Gouvernement Français n'en fut
averti que trop tard. Il déclina toute responsabilité,
et la rejeta sur le Danemarck, qui avait eu le tort de
délivrer, des papiers de navigation à ce navire, qui
devait à juste titre lui être suspect.

En Espagne le réprésentant du Gouvernement des
Etats-Unis, voulut en vain faire retenir le Stonewall.
Le corsaire partit pour Lisbonne, mais les autorités
Portugaises l'obligèrent à partir immédiatement. Il
était sur veillé par deux frégates Américains, le Niagara
et le Sacramento, qui suivirent le Stonewall jusque
dans le port de la Havanne, où les autorités Espagnoles
le remirent aux agents Américains.

Il y eut, à l'occasion de ces faits, un échange de
communications entre M. Drouyn de Lhuys et M.
Bigelow ; une lettre écrite par ce dernier le 10 Février
1855, constate que le Ministre de la Justice en France,
avait été saisi de la connaissance de ces faits, afin d'y
être statué conformément à la loi, s'il y avait lieu.
Du reste M. Arnous-Rivière ne niait point ces faits, et
dans une lettre publiée dans un journal, il déclarait
qu'il était prêt à répondre à la justice, et à lui prouver
qu'il n'avait pas violé les lois.

Le Gouvernement Américain ne s'est plus occupé
de la poursuite criminelle qu'on lui avait annoncée et
ne sait pas ce qu'il en est advenu.

Quant au second bélier blindé que M. Arman
construisait en meme temps que le Stonewall et qui
s'appelait le Chéops il fut vendu à la Prusse. Le
Gouvernement Français avait pris les mesures les plus
sévères pour s'assurer de la sincérité de cette vente,
M. Drouyn de Lhuys "was unwilling to be caught
again as in the case of the Stonewall ;" ainsi que le
dit M. Bigelow dans une lettre à M. Seward à la date
du 17 Mars 1865.

Tels sont les faits que les Etats-Unis exposent à la
justice Française et sur lesquels ils s'appuient pour
intenter un procès à MM. Arman, Voruz, Dubigeon,
Erlanger, et autres.

L'instance à deux objets, 1° une revendication de
propriété ; 2° un règlement de dommages intérêts. Les
Etats-Unis réclament d'abord comme leur propriété
nationale, l'argent qui a été versé entre les mains de
M. Arman et consorts par des individus se-disant
agents confédérés, et que les défendeurs détiennent en
vertu d'actes illicites et sans titre légitime.

Les Etats-Unis poursuivant en second lieu, confor-
mément à l'article 1382 du Code Napoléon, la répara-
tion du préjudice que leur ont causé les défendeurs

* Moniteur du 13 Mai 1864.

pendant les années 1863, 1864, et 1865, en violant à leur égard les dévoirs de la neutralité, tels qu'ils résultent du droit des gens et des dispositions spéciales des lois de la France.

Pour justifier son action en revendication de l'argent payé à MM. Arman et autres le Gouvernement de Washington prétend que c'est là de l'argent enlevé à la trésorerie des Etats-Unis par des rebelles qui n'ont jamais été reconnus comme un état ; l'autorité fédérale n'a jamais cessé d'exister en droit dans les états insurgés ; la qualité de belligérants reconnue aux Confédérés par la France n'a pu infirmer le droit de l'autorité fédérale ; la France en attribuant aux Confédérés la qualité de belligérants n'a eu pour but et pour effet que de maintenir sa propre neutralité. L'argent versé entre les mains de MM. Arman et autres n'a été fourni qu'en vertu d'un contrat illicite, et doit par conséquent être restitué au légitime propriétaires qui sont les Etats-Unis.

Cette argumentation est appuyée de textes de la Constitution Américaine, du Code Napoléon, d'opinions d'auteurs qui ont écrit sur le droit des gens et défini les cas de violation de la neutralité et les conséquences que ces cas entraînent, et de la citation des traités mentionnés dans l'histoire et relatifs à la neutralité entre les nations et des précédents qui ont signalé les rapports des peuples dans les guerres antérieures.

Enfin les Etats-Unis cherchent à démontrer qu'ils ont toujours observé partout les lois de la neutralité et citent à ce propos les indemnités qu'ils ont accordées à des sujets Anglais en 1794 ; ces sujets Anglais avaient été lesés par des corsaires Français qui, a l'insu du Gouvernement Americain, étaient sortis des ports de l'Amérique où ils avaient été équipés.

Les Etats-Unis citent d'autres cas où ils se sont empressés de faire respecter les droits de la neutralité, en 1853 ils ont fait interrompre la construction des vaisseaux destinés à la Russie même avant que la guerre ne fut commencée, en 1855 ils ont arrêté le Maury sur le simple soupçon d'être équipé en corsaire.

Après avoir ainsi mis en relief les procédés de l'Amérique, les Etats-Unis mettent en évidence les actes reprochés à MM. Arman, Voruz et autres, et prouvent qu'ils sont illicites et contraires au droit des gens et aux lois de la France. Il n'est donc pas douteux que les sommes remises à MM. Arman et autres en vertu de contrats illicites sont *sans cause* dans leurs mains et qu'ils en doivent la réstitution à leur légitime propriétaire les Etats-Unis d'autant plus que MM. Arman et consorts n'ont jamais pu ignorer les vices de leur possession, et que d'après les Articles 549 et 550 du Code Napoléon, le possesseur de mauvaise foi ne fait jamais les *fruits siens*, et doit les restituer au propriétaire légitime ; au moyen de ce dernier argument les Etats-Unis réclament à MM. Arman et autres non seulement les sommes ellesmêmes mais l'intérêt à partir du jour où l'argent a été encaissé en France.

Le deuxième objet de la demande des Etats-Unis contre MM. Arman et consorts est une somme de 2,800,000 francs de dommages intérêts. Cette demande repose sur l'Article 1383 du Code Napoléon, qui dit, "*Tout fait quelconque de l'homme qui cause à autrui un dommage oblige celui par la faute duquel il est arrivé à le réparer.*"

Voici comment les Etats-Unis justifient du préjudice qu'ils ont éprouvé.

MM. Arman et consorts au moyen de leur position officielle dans le monde politique ont fait et laissé croire qu'ils agissaient avec l'assentiment sécret du Gouvernement Français et ont ainsi donné des espérances à la Rébellion du Sud qui s'attendait à une intervention Française.

Les armements qui se préparaient en France ont paralysé le commerce Américain à ce point que les armateurs du Nord pour se soustraire aux menaces des corsaires préparés en Angleterre et en France ont fait dénationaliser leurs navires. C'est ainsi que 713 navires Américains sont devenus Anglais pendant la guerre de la sécession.*

MM. Arman et consorts sont en partie cause des appréhensions du commerce Américain, de la paralysie qui a atteint ses opérations, et lui ont ainsi causé un préjudice réel, dont ils doivent la réparation.

Quant au chiffre même des dommages-intérêts les Etats-Unis assurent que la somme de 2,800,000 francs est trés modérée en présence du chiffre des indemnités qu'ils réclament à l'Angleterre.

Tels sont les éléments du procès du Gouvernement de Washington contre les armateurs Français. J'ai puisé ces éléments dans le dossier des avocats des Etats-Unis.

Je n'ai pu connaître encore les défenses que produiront MM. Arman et consorts ; on pense qu'ils déclineront la compétence des tribunaux Français en cette matière qui est toute politique. On dit encore qu'ils prétendront que s'ils ont violé la loi de France c'est le Gouvernement Frainçais seul qui peut leur en demander compte et engager leur responsabilité, mais nullement un Gouvernement étranger.

C'est là tout ce que l'on sait jusqu'à présent sur la défense. En attendant qu'elle se soit fait connaître j'ai pensé qu'il était utile d'exposer les moyens de la demande à cause du conflit existant à ce même sujet entre la Grande Bretagne et l'Amérique.

Cet exposé fait suite à mes notes antérieures que le Foreign Office m'avait demandées je souhaite qu'elle remplisse son atteinte.

Je, &c.,
Paris, le 3 Déc. 1867. (Signé) TREITT.

* Lettre de M. Seward à M. Bigelow, le 15 Mars 1865.

FRANCE No. V.

Extract from the "Moniteur" of the 5th of April 1868.

INSTITUT IMPÉRIAL DE FRANCE.—ACADÉMIE DES SCIENCES MORALES ET POLITIQUES.

LES NEUTRES pendant la Guerre d'Orient.—Mémoire lu par S. Exc. M. Drouyn de Lhuys dans la séance du 4 Avril 1868.

(Received from His Majesty's Embassy at Paris.)

Les péripéties qui ont amené la guerre d'Orient en 1854 sont présentes à tous les souvenirs. L'ambassade hautaine du prince Mentchikoff à Constantinople et ses exigences impérieuses avaient, en démasquant tout à coup les plans du cabinet de Saint-Pétersbourg, rapproché les puissances occidentales dans un sentiment de solidarité devant le péril qui s'annonçait. La France, d'abord particulièrement impliquée dans la discussion qui s'était engagée au sujet des Lieux-Saints n'a pas tardé à reconnaître et à proclamer le caractère Européen du débat, agrandi par les prétentions inattendues de la cour de Russie. L'Angleterre, s'associant à nos vues, s'était placée résolûment à nos côtés. L'Autriche, la Prusse, la plupart des Etats de l'Europe, retrouvaient leur propre cause dans celle de l'équilibre général menacé, et témoignaient leurs sympathies aux défenseurs de l'intérêt commun.

Bientôt la situation dessinée dans l'ombre des négociations diplomatiques se produisait au grand jour. La Russie, poussant plus avant dans la voie où elle était entrée, passait des paroles aux faits et occupait une partie du territoire ottoman. Cette puissance, naguère si entourée de clients et d'amis, se condamnait ainsi elle-même à marcher dans l'isolement, car les alarmes qu'elle suscitait détachaient d'elle les derniers appuis de sa politique. L'Autriche, atteinte dans sa sécurité par les événements dont sa frontière était le théâtre, rassemblait ses troupes et se montrait disposée à soutenir, le cas échéant, ses protestations par les armes. La

ération de la France et de l'Angleterre, qui avaient miné le sultan à ne pas considérer comme un acte ierre l'invasion d'une province de son empire, eût core détourner la catastrophe ; mais la lueur sin- de l'incendie de la flotte turque, bombardée devant pe, fit éclater aux yeux de tous l'inévitable néces- le la guerre.

s puissances alliées ne songèrent plus qu'à l'ac- lissement des devoirs qui s'imposaient à elles. pour le salut de l'Europe, que le demembrement Turquie eût exposée à une crise redoutable, la ce et l'Angleterre puisaient dans le sentiment du et dans l'intimité d'une alliance honnête une force rtionnée à la grandeur de l'entreprise.

se rappelle le prodigieux élan de ces jours de ré- ion énergique et de cordiale confiance. Les ernements, animés du même esprit qui entraînait eux nations l'une vers l'autre, s'attachaient à faire raître, au profit de la civilisation et de l'humanité, aces de divisions séculaires.

des objets essentiels sur lesquels devait d'abord rter leur attention était la conduite qu'en leur té de belligérants, ils auraient à observer à l'égard uissances neutres. Sur ce point, comme sur tant res, des traditions divergentes les séparaient. ndant l'intérêt de la cause qu'ils avaient prise en s leur conseillait de se mettre d'accord, dès le t des hostilités, sur cette importante question. En les forces alliées, appelées à opérer ensemble dans onditions identiques, pourraient-elles obéir à des ipes dissemblables sans amener une confusion te et une série de conflits ? N'était-il pas à pré- r, d'autre part, que les neutres, dont nous devions efforcer de conserver le bon vouloir, se verraient étonnement, dans une guerre enterprise au nom équité internationale, soumis à des restrictions qui écouleraient pas d'une règle constante et précise, 'ils réagiraient, au détriment de notre œuvre com- e, contre les vexations d'une jurisprudence sans rmité ?

histoire des derniers siècles atteste, par une suite nglants témoignages, combien la Grande-Bretagne France ont compris différemment dans le passé roits et les devoirs des puissances maritimes en s de guerre ; le profond dissentiment des deux ns à cet égard s'est manifesté par des luttes con- lles, où rien n'était épargné pour faire prévaloir contre l'autre des législations opposées.

moment où allait s'ouvrir la guerre d'Orient, le professé par les deux nouvelles alliées, tel qu'il tait pour chacune d'elles de leurs antécédents his- ues, des stipulations fondamentales de leurs lois leurs traités avec d'autres Etats, enfin des livres leurs publicistes les plus autorisés, pouvait se mer comme il suit :

France, s'armant du droit reconnu par les usages guerre de priver son ennemi d'une portion con- rable de ses ressources au moyen de la destruction on commerce maritime, mais combinant l'exercice droit avec le principe de l'inviolabilité du pavil- les puissances non belligérantes, considérait qu'il tait permis de saisir, avec les bâtiments ennemis, es les marchandises chargées à bord, même celles appartiendraient à des neutres. Fidèle, d'autre , au respect dû aux puissances avec lesquelles elle eurait en paix, elle s'interdisait de capturer sur navires la propriété même de ses ennemis.

'Angleterre, ne se préoccupant que d'aller droit à archandise de son adversaire pour l'anéantir, et fférente aux salutaires fictions derrière lesquelles rite l'indépendance des petits Etats, s'arrogeait la lté de visiter tout bâtiment rencontré en haute , et, quel qu'en fût le pavillon, d'y confisquer les s de l'ennemi. En revanche, elle s'abstenait de cher à la propriété neutre, même sous pavillon bel rant.

'était encore une tradition de la Grande-Bretagne d'interdire aux neutres, pendant la guerre, le com- ce que les belligérants réservent en temps de paix urs propres sujets, comme c'est le cas dans sieurs pays pour le cabotage et la navigation coloniale. Cette prétention, emise d'abord au début de la guerre de Sept-Ans, s'était maintenue dans la doctrine anglaise sous le nom de la règle de 1756.

Enfin, en matière de blocus, les Anglais avaient adopté des pratiques contre lesquelles, au temps de nos grandes guerres, nous avions toujours élevé les protestations les plus vives. Tout en proscrivant en théorie les blocus sur papier, ils avaient fait des blocus par simples croisières une application non moins abusive. Il suffit de rappeler que le blocus continental, cette mesure gigantesque de rétorsion, a été provoqué, au commencement de ce siècle, par les excés dont le gouvernement britannique avait donné l'exemple.

Telles étaient les coutumes diverses qu'il s'agissait de ramener à l'unité. Dès les premiers jours de janvier 1854, le ministre des affaires étrangères de France signalait, dans ses entretiens avec le représentant de la Grande-Bretagne à Paris, l'importance considérable qui s'attachait, selon lui, à une manifestation publique de bon accord entre les deux pays sur des questions d'une conséquence si décisive pour la nature de leurs rapports avec les puissances neutres.

Afin d'atteindre ce but, on devait éviter, disait-il, l'invocation de principes absolus, car l'opposition entre ceux que l'Angleterre maintenait avec une énergie traditionnelle et ceux que nous nous faisions gloire de défendre était tellement radicale, qu'en les dressant les uns en regard des autres, on se condamnait à une contradiction sans issue. Il fallait trouver un terrain sur lequel les alliés, en réservant au besoin leurs théories particulières, puissent se concerter pour une pratique commune. Or, cela n'était possible qu'à une condition, c'est que chacun renonçât, au moins pour la durée de la guerre, à user des facultés que l'un des deux s'estimait permises, mais que proscrivait l'autre. Il est concevable, en effet, que, sans répudier un droit, sans se départir d'une prétention, l'on s'abstienne pour un temps de les faire valoir, tandis qu'on ne saurait, sans inconséquence, exercer, même exceptionnellement, des actes dont on conteste la légitimité. Ce mode de transaction, laissant intactes les doctrines, ne heurtait aucun principe, ne soulevait aucun embarras. Destiné d'ailleurs à être accueilli avec reconnaissance par les puissances non belligérantes, il était conforme aux intérêts comme aux intentions libérales des alliés.

Un tel langage, tout en impliquant de notre part l'abandon de quelques-uns des priviléges que revendiquait notre marine, était cependant en harmonie avec nos traditions nationales, constamment favorables aux droits des neutres et à la liberté des mers. De sérieux motifs de réflexion, tirés de la situation générale du moment, nous encourageaient dans cette voie. L'initiative de la France et de l'Angleterre, marchant au secours d'un allié opprimé, avait l'opinion pour elle dans la plus grande partie de l'Europe, et cette disposition des esprits était un élément de force pour les deux puissances, qui pouvaient espérer en retirer un jour une aide plus effective encore. Une des conséquences heureuses de leur attitude était de leur permettre de déclarer l'alliance ouverte à tous les Etats qui, en vue de l'intérêt général, voudraient y accéder, dans les termes où elles-mêmes l'avaient conclue. Elles devaient donc veiller à ce que rien, dans leur conduite, ne vint blesser des neutralités bienveillantes qu'elles désiraient transformer en concours avoué.

On sait de quel poids pesèrent en effet les puissances neutres dans les négociations relatives à la guerre d'Orient, combien le suffrage approbateur du plus grand nombre, l'adhésion formelle de quelques-unes, contribuèrent à assurer à la France et à l'Angleterre cette position prédominante que consacra définitivement le succès de leurs armes. Les cours allemandes, en particulier, influèrent beaucoup par leurs résolutions sur la marche des évéments. Or, au moment où la crise éclatait, l'Allemagne entière était soumise depuis trop longtemps à l'ascendant de notre adversaire, grands et petits Etats étaient rattachés à lui par trop de liens, pour qu'il fût sage, en prévision du rôle réservé à ce pays, de refroidir par l'alarme des intérêts materiels les sentiments qui commençaient à s'y faire jour en notre faveur.

La prudence qui nous commandait de ménager le commerce allemand, devait nous conseiller de même à l'égard des puissances scandinaves, dont la position géographique rendait, pour les deux parties, l'amitié précieuse, l'hostilité inquiétante. Parmi les traditions qui liaient à la cour de Saint-Pétersbourg les cabinets de Stockholm et de Copenhague, le souvenir des neutralités armées de 1780 et de 1800 tenait une place principale. Ces deux grandes manifestations étaient nées sous l'influence de la politique russe. Si nous reproduisions les prétentions qui les avaient provoquées autrefois, n'était-il pas à craindre que nous ne dussions soulever les mêmes résistances et pousser dans les bras de notre ennemi les peuples qui avaient obéi à ses instigations?

Les Etats-Unis de l'Amérique du Nord étaient pour nous l'objet de préoccupations semblables; la Russie captait leur faveur, et elle était d'accord avec eux sur l'interprétation des lois de la mer. De tout temps, la grande puissance du Nouveau Monde avait soutenu les droits des pavillons neutres. Fallait-il offrir à nos ennemis l'occasion de la rallier à eux sur ce terrain et de la tourner contre nous?

L'Angleterre n'était pas insensible à ces considérations, mais elle les combattait en alléguant l'impossibilité où serait son gouvernement d'abandonner, en face du pays, les règles réputées inviolables de son vieux droit maritime.

Cependant le Danemark et la Suède avaient officiellement notifié leur intention de demeurer neutres en cas de conflit. Le ministre des affaires étrangères, écrivant à Londres au sujet de cette communication, en prenait texte pour presser le cabinet britannique de résoudre les questions qu'elle posait.

"Tâchez de connaître à cette occasion," mandait-il le 4 janvier 1854 à notre ambassadeur, "quelles sont les dispositions actuelles du gouvernement anglais en ce qui concerne les neutres. C'est une matière sur laquelle a régné jusqu'ici entre l'Angleterre et nous une grande différence d'opinions. J'ai d'ailleurs sujet de penser, d'après un commencement de polémique que j'ai remarqué dans les journaux anglais, que le commerce serait peu favorable à l'application des anciennes doctrines du gouvernement britannique dans toute leur rigueur. Je vous prie, tout en évitant d'entamer une discussion prématurée sur la question de droit, de recueillir sur ce point des informations aussi exactes que faire se pourra, et de chercher à savoir notamment à quelles obligations le cabinet de Londres croit le Danemark et la Suède tenus envers lui dans l'exercice de la neutralité. Lord Clarendon n'ignore pas sans doute, que la Russie éprouve un vif mécontentement de l'attitude de ces deux puissances, et en particulier de celle de la Suède. C'est une raison de plus pour nous, ce me semble, de croire à la sincérité des résolutions des cabinets de Copenhague et de Stockholm, et de ne pas augmenter, par de trop grandes exigences, les embarras de leur position."

Le 12 janvier, le ministre écrivait encore, en transmettant à Londres une copie de la dépêche qu'il se proposait d'adresser à Stockholm et à Copenhague:

"J'attacherais un grand prix à ce que la réponse de lord Clarendon fût conçue, autant que possible, dans le même sens que la nôtre et pût tranquilliser entièrement la Suède et le Danemark sur l'exercise de leur neutralité. Je sais que le gouvernement anglais n'est pas préparé à se départir de ses anciennes maximes en matière de droit maritime; mais je désire qu'au moins dans la pratique il mette sa conduite d'accord avec la nôtre, si la guerre vient à éclater. Tout prouve, en effet, que ce sera le meilleur moyen d'accroître les sympathies que nous témoignent les deux cours scandinaves, et à cause de notre bon droit dans la question générale, et à cause des exigences blessantes que le cabinet de Saint-Pétersbourg à mises en avant auprès d'elles. La neutralité même est un acte d'indépendance envers la Russie que leurs liens de famille et les événements de ces dernières années rendent très-méritoire, et dont leur puissant voisin ne se dissimule pas le caractère peu bienveillant. C'est donc une attitude que peut les rapprocher plus encore de nous dans cer-saines éventualitée, et qu'il faut ménager avec soin. Trop de rigueur, au contraire, dans la surveillance des relations commerciales que le pavillon marchand de la Suède et du Danemark tâchera d'entretenir avec les ports russes, pourrait refroidir des sentiments qui sont en ce moment tels que nous devons les désirer et amener des discussions d'une nature fâcheuse. Je sais que la Suède compte avec confiance sur la liberté du commerce sous pavillon neutre."

Ce qui touchait particulièrement le gouvernement anglais, c'était la crainte de voir l'Amérique inclinée contre nous et prêter à nos ennemis le concours de ses hardis volontaires. La population maritime des Etats-Unis, leur marine entreprenante, pouvaient fournir à la Russie les éléments d'une flotte de corsaires qui, attachés à son service par des lettres de marque, et couvrant les mers comme d'un réseau, harcèleraient et poursuivraient notre commerce jusque dans les parages les plus reculés. Pour prévenir ce danger, le cabinet de Londres tenait beaucoup à se concilier les bonnes dispositions du gouvernement fédéral. Il avait conçu l'idée de lui proposer, en même temps qu'au gouvernement français et à tous les Etats maritimes, la conclusion d'un arrangement ayant pour but la suppression de la course et permettant de traiter comme pirate quiconque, en temps de guerre, serait trouvé muni de lettres de marque.

Ce projet qui fut abandonné dans la suite, témoigne de l'inquiétude éprouvée par les Anglais. Nous pensions comme eux sur la course, pratique barbare qui masquait trop souvent, sous une apparence de dévouement patriotique, la violence excitée par l'appât du lucre. A des époques antérieures, justifiée par l'acharnement des guerres, elle avait pu, du sein de nombreuses iniquités, faire jaillir quelques actions héroïques, transmettre même à l'histoire quelques noms glorieux. Mais nous la considérions comme incompatible désormais avec les usages des nations civilisées qui ne peuvent souffrir que des particuliers soient armés des droits de la guerre, et qui en réservent les redoubtables applications aux pouvoirs publics des Etats constitués. Toutefois, avant de fixer irrévocablement notre opinion sur ce point par des engagements internationaux, nous désirions assurer une consécration semblable à d'autres progrès de la législation des mers. La conduite commune que nous proposions au gouvernement britannique d'observer dans notre lutte contre la Russie, nous paraissait le meilleur acheminement vers cet ensemble de réformes qui, dans notre pensée, étaient corrélatives entre elles.

Si, en fait, dans le système quo nous proposions, nous avions moins de concessions à offrir que nous n'en demandions à l'Angleterre, ce n'était pas l'effet d'une prétention arbitraire de notre part, la nature même des choses le voulait ainsi. Pour aboutir à une conciliation entre deux pratiques divergentes, il fallait nécessairement que sur chaque point en discussion ce fût la plus libérale qui prévalût. Il n'y avait pas là seulement une question d'intérêt ou de convenance, mais une loi logique. L'Angleterre ne pouvait nous demander de nous arroger tout d'un coup, pendant la guerre que nous ferions en commun, des pouvoirs que nous contestions en principe et dont l'exercice à l'égard des tiers était réprouvé par nous depuis des siècles. Eût-elle admis elle-même que nous lui dissions, par exemple: Si vous voulez que nous nous mettions d'accord, il faudra que vous consentiez à saisir, comme nous, les biens neutres sous pavillon ennemi? A un pareil langage, les hommes d'Etat qui dirigaient les conseils de la reine Victoria n'eussent pas manqué de répondre: Mais les biens neutres sont, d'après nos théories, inviolables partout et en tout état de cause; nous l'avons proclamé maintes fois; nous ne saurions aujourd'hui, par amour de la symétrie, usurper un droit dont nous ne reconnaissons pas l'existence.

Au contraire, que les deux nations s'entendissent pour se relâcher de concert de la rigueur de leurs usages particuliers sur les points où l'une d'elles avait adopté une jurisprudence plus favorable aux tiers, et cette règle si simple tranchait toutes les difficultés. La

...e et l'Angleterre se rapprochaient, sans se dé-
; leur tolérance n'infligeait aucun blâme à leurs
...es, aucun démenti à leurs déclarations antéri-
s. Une pente naturelle devait donc les amener à
...contrer dans cette voie, et tout le poids de nos
...nements résidait dans la force même de la posi-
...ue, dès le début de la négociation, nous avions
...nue et prise.
...ntimité qui de jour en jour se resserrait plus
...tement entre nos alliés et nous, garantissait d'ail-
à nos suggestions plus de crédit et nous autorisait
présenter d'une manière plus pressante. Au
...ent même où se traitait cette affaire, les deux
...ernements se donnaient un gage mutuel de leur
...par les instructions qu'ils adressaient à leurs
...s consulaires et diplomatiques, aux gouverneurs
...urs colonies, aux commandants et aux officiers
...urs marines respectives, afin d'étendre indistincte-
aux sujets anglais et français, dans toutes les
...s du monde, leur protection réciproque. Ainsi,
...veux des nations étrangères, la France et l'An-
...re confondaient leurs drapeaux. Une telle soli-
...é rendait plus urgente la nécessité d'une entente
...lète sur les principes de leur action combinée.
...re part, l'anxiété des intérêts privés, la pression
...pinion publique, les besoins impérieux du com-
...e, exigeaient qu'on mît fin à toute incertitude.
les derniers jours de février, des interpellations
...t lieu au parlement britannique. Un des minis-
...le la Couronne répondit que la reine ferait pub-
...ment connaître ses intentions à l'égard des
...es, avant toute déclaration de guerre. A cette
...ion, le ministre français, avec une nouvelle
...ance, écrivait à notre ambassadeur, en date du
...ars :

"Je regretterais vivement que l'Angleterre pro-
...à une mesure de cette importance sans se con-
...r préalablement avec nous. Il serait du plus
...ais effet, au début d'une guerre faite en commun,
...es deux pays parussent divisés sur des théories,
...ue dans la pratique ils doivent agir ensemble.
...lez appeler de nouveau l'attention de lord Cla-
...n sur cet objet. Il me semble que, sans réveiller
...ontroverse qui alarmerait des intérêts que tout
...conseille de ménager avec soin, il serait suffisant
...rédiger pour les commandants de nos bâtiments
...nstructions strictement calculées d'après les né-
...és de la guerre actuelle et de nature à rassurer
...ntres, particulièrement ceux que les habitudes de
...commerce portent a naviguer de préférence dans
...r Noire ou dans la mer Baltique. De cette façon,
...leterre et la France réserveraient chacune leur
...ne, et leur action se confondrait dans une même
...que, que l'on serait toujours maître de rendre plus
...e, pendant le cours des hostilités, si les circon-
...es venaient à l'exiger."

...cette dépêche, qui résumait les conversations de
...tre des affaires étrangères avec l'ambassadeur
...is à Paris, le gouvernement britannique répon-
...que les avocats de la Couronne avaient été con-
...s, qu'on avait débattu à plusieurs reprises la ligne
...nduite qu'il convenait d'adopter à l'égard des
...es, qu'avant peu l'on serait en mesure de prendre
...décision, mais qu'on ne le ferait certainement pas
...concerter avec le gouvernement de l'Empereur ;
...lieu d'espérer qu'on pourrait admettre quel-
...s généraux se rapprochant de ceux que
...ance avait appliqués de tout temps ; enfin si l'on
...uvait s'entendre sur une énonciation de principes,
...herait au moins de rédiger, pour les comman-
...s des forces navales, des instructions conçues dans
...rmes indiqués par nous.

...elques jours après, le 14 mars, lord Cowley
...muniquait au ministre des affaires étrangères a Paris
...projet de déclaration dans lequelle le gouverne-
...britannique, après avoir réservé la question de
..., s'engageait a borner la visite en haute mer à la
...ication de la nationalité du navire et aux mesures
...ises pour constater s'il n'y avait à bord ni contre-
...e de guerre, ni correspondances de l'ennemi ; il
...tait du reste que le pavillon neutre couvrirait la
marchandise ennemie, tout en laissant intacte sous pavillon ennemi la marchandise neutre ; il manifestait enfin l'intention de ne pas délivrer de lettres de marque, et de traiter comme pirates tous ceux de ses sujets qui en accepteraient.

Ce document, qui avant d'être envoyé à Paris avait subi plusieurs modifications afin d'arriver à une plus grande conformité avec les doctrines françaises, contenait des concessions importantes. La plus essentielle était le respect, tout nouveau de la part de l'Angleterre, de la marchandise ennemie sous pavillon neutre. Eclairé sur le coté politique de la question, le gouvernement britannique avait senti la nécessité de rassurer les puissances neutres, qu'effrayait le souvenir de la violation constante de leur pavillon par ses croisseurs pendant les dernières guerres, et de toutes les vexations qu'avait entraînées l'exercice du droit de visite poussé à outrance. Quand ce droit, en effet, impliquait la recherché de toutes les marchandises auxquelles pouvait être attribuée une provenance ennemie, il revêtait la forme la plus intolérable, et l'emploi qu'en avait fait la Grande-Bretagne était de nature à répandre l'effroi parmi les nations non belligérantes. Restreint aux termes où le cabinet de Londres voulait le maintenir, il pouvait encore, dans la pratique, laisser la porte ouverte à bien des abus de la force, et nous jugions qu'il devait être entouré de garanties plus protectrices pour les neutres.

C'est sur ce point que porta principalement la discussion entre le ministre français et l'ambassadeur d'Angleterre. A la suite de ce débat, qui s'étendit également sur plusieurs articles de détail, la déclaration anglaise, refondue, fut renvoyée à Londres le 20 mars, sous forme d'un projèt nouveau que pourrait s'approprier pour la circonstance actuelle chacun des deux gouvernements, si le cabinet britanniques en venait à partager notre manière de voir.

"Ce projet," écrivait le ministre dans la lettre qui en accompagnait l'envoi, "a été préparé entre lord Cowley et moi dans des entretiens confidentiels sur cette matière délicate. Je viens d'en donner communication à M. le ministre de la marine en le priant de me faire connaitre son opinion le plus tôt possible. Nous avons, ce me semble, à opter entre une déclaration commune qui, s'appliquant uniquement à la présente guerre, n'engagerait pas les maximes de l'Angleterre et dans laquelle nous n'abandonnerions pas les nôtres, ou deux déclarations simultanées qui, annonçant les mêmes intentions quant à la conduite et aux instructions données aux commandants des forces navales respectives, réserveraient également la différence de nos doctrines ; mais j'inclinerais pour une seule déclaration, qui serait plus satisfaisante pour les neutres, et qui, en constatant mieux notre parfait accord, frapperait plus fortement les esprits."

Le 24 mars, le ministre des affaires étrangères écrivait encore en ces termes au comte Walewski, notre ambassadeur à Londres :

"Les observations que lord Cowley m'a présentées sur le projet de déclaration relatif à la neutralité, que j'ai eu l'honneur de vous adresser le 20 de ce mois, donnent lieu, de notre part, à certaines remarques sur lesquelles je crois utile d'appeler votre attention.

"Pour parvenir à faire une déclaration commune, on devait se borner à formuler ce que les deux nations entendaient admettre ou repousser pendant la durée de la guerre actuelle. Les théories de la France et de l'Angleterre étant différentes, il était indispensable d'éviter tout ce qui pouvait ressembler à une sorte de déclaration de principes. Le projet que je vous ai communiqué était une transaction entre les systèmes des deux pays ; il ne faisait prévaloir ni l'une ni l'autre de ces doctrines.

"Si le gouvernement anglais désire que sa déclaration indique "qu'il réserve l'application de tel ou tel principe," ou "qu'il renonce, quant à présent, à l'exercice de tel ou tel droit," en indiquant ainsi qu'il considère ce principe comme reconnu, et ce droit comme lui appartenant, il faudra nécessairement en venir à faire deux déclarations, semblables quant au

fond, mais différentes quant à la forme : car, évidemment, le Gouvernement français ne peut dire "qu'il renonce à l'exercice d'un droit" dont il a toujours contesté l'existence, ou "qu'il réserve l'application d'un principe," quand il a sans cesse refusé de le reconnaître. Ceci, du reste, n'est qu'une simple question de forme ; ce qui importe le plus en réalité, c'est que les deux gouvernements soient d'accord quant aux règles pratiques qui devront être appliquées.

"Je passe à l'examen de deux points importants, et sur lesquels je vous invite à appeler plus spécialement l'attention de lord Clarendon.

"Le premier est relatif aux marchandises neutres saisies à bord de navires ennemis. Le projet je vous ai envoyé déclarait que la confiscation n'en serait pas prononcée ; c'est là une question très-grave en elle-même, très-délicate surtout pour le Gouvernement français. Il est à craindre, en effet, que les marchandises ennemies chargées à bord de navires ennemis n'arrivent à naviguer sans danger, au moyen de neutralisations simulées ; et, d'autre part, les lois françaises prononçant la confiscation des navires ennemis sans admettre d'exception pour les marchandises neutres, il faudra peut-être une loi nouvelle pour enlever aux marins, qui ont des droits à exercer, cette part souvent très-considérable de leurs prises. C'est une question, du reste, au sujet de laquelle j'aurai à m'entendre, comme sur toutes les autres, avec M. le ministre de la marine. Mais je ne puis le consulter utilement sur ces divers points que lorsque j'aurai été officiellement et complétement informé des propositions définitives du cabinet britannique.

"Le gouvernement anglais paraît insister pour que le projet de déclaration défende aux neutres de se livrer, pendant la guerre, soit au commerce colonial, soit au cabotage, s'ils sont réservés pendant la paix.

"Je n'ai pas besoin de vous rappeler avec quelle persistance le Gouvernement français, à toutes les époques, a soutenu les réclamations nombreuses et vives que l'adoption de cette règle souleva, dès l'origine, de la part des nations neutres. La France est donc liée par ses précédents historiques ; elle l'est également par des traités faites avec plusieurs Etats, dont elle s'est engagée à laisser les navires naviguer librement en temps de guerre, même entre deux ports nenemis. Comment pourrions-nous aujourd'hui nous associer à une disposition qui refuserait aux neutres un droit que nous avons toujours revendiqué pour eux, et que nous avons même proclamé solennellement dans nos traités ?

"Je n'indique qu'en passant l'intérêt particulier que cette question présente pour la France, et les conséquences différentes que l'adoption de la règle proposée aurait pour les deux pays. L'Angleterre, qui admet en tout temps les pavillons étrangers à prendre part au cabotage et au commerce des colonies, n'a rien à craindre de l'application qui pourrait lui en être faite ; la France, au contraire, qui réserve encore ces navigations au pavillon national, pourrait avoir éventuellement à souffrir de la règle qu'on l'invite à proclamer.

"Je me demande, du reste, s'il y a un intérêt considérable, pour la guerre actuelle, à insérer dans la déclaration une disposition semblable. La Russie, il est vrai, réserve en temps de paix le cabotage et le commerce des colonies ; mais, dans la Baltique, le cabotage ne se fait qu'entre un petit nombre de ports, qu'il sera facile aux flottes de fermer complétement au moyen d'un blocus effectif. Il en est de même de la mer Noire, sur laquelle les flottes combinées dominent. Quant au commerce de l'Amérique russe, qui est le monopole d'une compagnie, s'il vient à être exercé par les vaisseaux des Etats-Unis, il en pourrait résulter, dans un intérêt minime, des complications graves que la France a d'autant plus le désir d'éviter sur cette question, que son traité de 1778 avec les Etats-Unis est un de ceux où le droit des neutres de se livrer, pendant la guerre, aux commerces réservés a été formellement stipulé.

"Je me plais à reconnaître, du reste, tous les efforts que le gouvernement anglais a fait pour se rapprocher autant que possible des doctrines de la France, et vous pouvez assurer de nouveau lord Clarendon de notre désir sincère d'entrer dans la voie des transactions mutuelles. Nous en avons donné la preuve sur la question des marchandises neutres à bord des navires ennemis. Mais, en ce qui concerne le droit des neutres de se livrer aux navigations réservées, lord Clarendon reconnaîtra, j'en suis certain, que la concession ne saurait venir de notre part. Le gouvernement anglais, en effet, qui regarde la prohibition comme fondée sur le droit des gens, peut bien renoncer à s'en prévaloir, tout en réservant son système, tandis que la France ne saurait proclamer une règle que, d'après ses principes, elle ne se croit pas autorisée à appliquer.

"Telles sont les observations que je vous prie de présenter à lord Clarendon. J'espère qu'elles le détermineront à écarter de la déclaration anglaise une règle que la France ne pourrait faire figurer dans la sienne. Jusqu'ici les deux gouvernements ont saisi toutes les occasions de faire ressortir la solidarité complète qui unit si heureusement les deux nations ; il importe que cette même pensée continue de se révéler jusque dans les règles à établir pour les questions secondaires. Si, sur certains points, les deux pays ne peuvent adopter les mêmes principes, il me paraît du moins très-désirable qu'ils évitent, surtout dans une déclaration solennelle, d'en proclamer de différents.

"Vous voudrez bien me faire connaître le plus tôt qu'il vous sera possible le résultat de l'entretien que vous aurez eu avec lord Clarendon."

Les points délicats touchés dans cette dépêche faisaient beaucoup hésiter l'Angleterre. Cependant les événements marchaient, le temps pressait. Le 26 mars, le ministre des affaires étrangères signalait, dans une dépêche télégraphique, la nécessité d'une prompte solution. "Insistez," mandait-il à M. le comte Walewski, "sur les très-graves inconvénients d'une déclaration séparée qui ferait douter de l'entente des deux pays, alarmerait les neutres, et amènerait d'involontaires et inévitables conflits entre les commandants. Si lord Clarendon accepte le principe d'une déclaration commune, sauf à régler le détail par des instructions séparées, priez-le de me faire communiquer son projet pour que je puisse m'entendre avec le ministre de la marine et arriver à une conclusion."

Reprenant sa pensée dès le lendemain pour la développer, voici ce qu'écrivait le ministre en date du 27 :

"Mes entretiens avec lord Cowley ont été consacrés, depuis quelque temps, à l'examen de l'importante et délicate question des droits des neutres. Lord Clarendon a dû être informé presque journellement de l'objet de ces discussions, et je sais que M. l'ambassadeur d'Angleterre lui a déjà transmis le projet de déclaration dont nous avons posé les bases ensemble. Ce ministre se trouvait ainsi tout préparé à recevoir la communication que je vous chargeais de lui faire par ma dépêche du 24 de ce mois et dont le but était de l'amener à émettre une opinion définitive sur des points qu'il a eu le temps d'examiner. Ma dépêche télégraphique d'hier vous aura prouvé l'intérêt que le Gouvernement de l'Empereur attache à sortir d'une indécision qui, aujourd'hui que l'état de guerre est proclamé, ne saurait se prolonger sans les plus graves inconvénients. J'espère que vos efforts auront déterminé le principal secrétaire d'Etat de Sa Majesté Britannique à renoncer au système pour lequel il avait laissé percer ses préférences et qui consisterait dans la publication de deux déclarations non-seulement séparées, mais distinctes quant aux principes qui seraient émis ou reservés. Ce n'est qu'avec le plus vif regret que nous verrions l'Angleterre adopter une marche qui, dès le principe même d'une guerre faite en commun, accréditerait l'opinion d'une divergence entre les deux gouvernements et affaiblirait, aux yeux de nos adversaires, l'effet politique de l'union intime et complète qui a donné à notre diplomatie la force qu'il est maintenant plus nécessaire que jamais de conserver pour nos actes.

"Si de l'ensemble nous descendons aux détails, les dangers ne sont pas moins grands. Entre la déclara-

le la France et celle de l'Angleterre, les neutres
t un choix, et nul doute qu'ils ne se rangent plus
tiers autour de la puissance qui, par sa fidélité
traditions auxquelles ils sont inviolablement
nés, leur apparaîtra comme le champion de
propre cause. Ne serait-il pas préférable
ur montrer leur sûreté dans l'union des deux
es et d'éviter avec soin de raviver une vieille
lle, qui alarmerait leurs intérêts, exciterait leurs
ns, et les reporterait peut-être moralement dans
tre camp que le nôtre ?

'un autre côté, et ce n'est pas une des moindres
ions à faire au système indiqué par lord Claren-
comment concevoir qu'en présence de deux
rations distinctes établissant une séparation
que entre les gouvernements, leurs amiraux et
officiers de mer s'entendent dans la pratique ?
gira entre eux, je ne veux pas dire des conflits,
des divergences involontaires et inévitables qui
nt au succès de leurs opérations.

es Etats-Unis enfin sont prêts, je ne saurais en
r, à revendiquer le rôle que nous déclinerions et
aire les protecteurs des neutres, qui eux-mêmes
rchent leur appui. Le cabinet de Washington
propose en ce moment de signer un traité
tié, de navigation et de commerce où il a inséré
série d'articles destinés à affirmer avec une
té nouvelle les principes qu'il a toujours sou-
et qui ne diffèrent pas des nôtres. Le principal
aire d'Etat de Sa Majesté Britannique com-
ra que nous n'aurions aucun moyen de ne pas
dre favorablement à l'ouverture qui nous est
si la France et l'Angleterre, bien que se trouvant
ées dans une même enterprise, affichaient pub-
nent des doctrines opposées. Que les deux
rnements, au contraire, s'entendent sur les
s d'une déclaration commune, et nous pourrons
ajourner l'examen des propositions des Etats-

Il me paraît difficile que ces considérations ne
ent pas l'esprit de lord Clarendon, et j'espère
e décidera à accepter un projet qui, se bornant
ir compte des conditions de la guerre actuelle,
a de côté des principes qu'il est d'autant moins
tun de soulever ou de rappeler que leur applica-
erait inutile, et dont les effets, comme dans la
on du cabotage sur les côtes des pays ennemis,
xemple, peuvent être remplacés par l'emploi de
es pratiques au sujet desquelles tout le monde
'accord. Les instructions données aux com-
ants des bâtiments de guerre des deux pays
éeraient naturellement à ce qu'il y aurait d'incom-
ans la déclaration identique ; il serait toutefois
aire, même dans le cas où ces instructions
ient conserver quelques traces des doctrines parti-
es de la France et de l'Angleterre, qu'elles
nt concertées en commun, et vous donnerez à
Clarendon l'assurance que M. le ministre de la
e employerait tous ses soins à se rapprocher
t que possible de l'amirauté britannique dans les
ions qu'il transmettrait à nos amiraux."

même jour, le ministre adressait à Londres un
au projet de déclaration, précédé d'un court
nbule, et où il s'était efforcé de se rapprocher le
ossible, pour la forme comme pour le fond, des
exprimées par l'Angleterre.

Cette déclaration," écrivait-il, "que j'ai concertée
itivement avec M. le ministre de la marine, ne
ère que les principes essentiels sur lesquels il
rte de constater l'accord des deux gouvernements ;
nstructions séparées, qui pourront d'ailleurs être
roquement communiquées, régleront l'applica-
de ces principes suivant la législation de chacun
deux pays et résoudront, sous ce point de vue
al, les difficultés sur lesquelles la divergence des
ines respectives ne permet pas un accord patent,
oins immédiat."

t envoi se croisa en route avec un contre-projet
lequel les Anglais, malgré nos observations,
tenaient l'interdiction du commerce neutre "*in
itu* entre deux ports appartenant à l'ennemi,"
rd Cowley, le 28 mars, faisait savoir que cette
rédaction était définitivement adoptée par le conseil de Sa Majesté Britannique.

Elle était inacceptable pour nous. Le jour même le ministre des affaires étrangères constatait dans ces termes l'impossibilité de s'entendre : "Je regrette," écrivait-il à Londres, "qu'en rappelant dans cet acte des théories qui ne sont pas les nôtres, et en y insérant l'interdiction du commerce de cabotage, ainsi que le principe de la limitation du commerce des neutres au seul commerce permis en temps de paix, le gouvernement britannique nous place dans la nécessité de faire une déclaration séparée. Cette déclaration comprendra tous les points indiqués dans le projet joint à ma dépêche d'hier, sauf le préambule, dont j'ai fait l'objet d'un rapport à l'Empereur. J'ai obtenu, ainsi que vous le verrez, l'assentiment de M. le ministre de la marine à la règle qui exempte de la saisie la marchandise neutre à bord d'un navire ennemi.

"Lord Cowley m'a communiqué en même temps le projet des instructions destinées aux commandants des bâtiments de guerre anglais, en m'annonçant qu'il était sur le point d'être signé. Dès lors il est superflu de relever les questions qu'il tend à résoudre dans un sens opposé à nos principes et à notre legislation. Il ne nous reste qu'a rédiger, à notre point de vue, les instructions destinée à nos propres croiseurs. Je viens de prier M. le ministre de la marine de préparer ce travail, que j'aurai soin de vous communiquer pour être porté à la connaissance du gouvernement britannique. J'ai l'espoir que, dans l'exécution, cette divergence des instructions n'entraînera pas d'inconvénients graves, car nous sommes d'accord sur les points les plus essentiels, et je reconnais particulièrement l'esprit de libéralité avec lequel le gouvernement anglais s'est rapproché de nos principes en matière de blocus. Cependant, si quelque dissentiment se présentait, je n'aurais qu'à regretter d'autant plus les retards qu'ont éprouvés la préparation et la communication des projets sur lesquels une entente préalable aurait été si désirable."

C'était un vif désappointement pour les deux gouvernements que de voir échouer leur entente par suite d'une dissidence d'un intérêt médiocre pour la conduite de la guerre actuelle. Mais la France était liée par des engagements positifs avec d'autres puissances, et il lui était juridiquement impossible, quand même elle eût été moralement libre, de se départir de la position où elle s'était retranchée. Dans les matières où sa latitude d'action n'était pas restreinte à l'avance, elle avait témoigné de son empressement à aller au-devant de son alliée en élargissant sa législation ancienne. Ainsi tous les projets envoyés à Londres prononçaient l'abolition de la course, et, abandonnant les usages séculaires de notre marine, nous venions de consacrer definitivement l'immunité de la propriété neutre sous pavillon ennemi. Nous avions donné la pleine mesure de nos dispositions conciliantes ; il ne nous était plus permis de la dépasser.

Bien que les déterminations notifiées par l'ambassadeur d'Angleterre parussent irrévocables, le cabinet britannique se rendait bien compte des embarras de la situation. Il était très-sensible aux inconvénients que devait avoir la promulgation simultanée de deux règles différentes, destinées à être paralèlement appliquées aux nations neutres. Au dernier moment, le conseil fut assemblé de nouveau. Après une longue discussion, il fut décidé que l'article qui avait provoqué nos objections serait rayé de la déclaration anglaise.

Dès lors l'entente était complète. Pour arriver à une identité absolue, il nous était facile de plier notre projet aux formes traditionnelles que doivent revêtir les ordres en conseil émis au nom de la reine du Royaume Uni. En quelques heures, grâce au télégraphe, les deux cabinets purent constater leur accord et aviser à la publication immédiate de leur déclaration commune. Le texte français, précédé d'un rapport à l'Empereur, parut au *Moniteur* du 30 mars 1854, avec la date du jour précédent. On voit qu'il n'y avait pas eu de temps de perdu. Voici les deux pièces :

RAPPORT À L'EMPEREUR.

"SIRE, Paris, 29 mars 1854.

"A UNE époque où les relations maritimes et les intérêts commerciaux occupent une si large place dans l'existence des peuples, il est du devoir d'une nation qui se trouve contrainte à faire la guerre de prendre les mesures nécessaires pour en adoucir autant que possible les effets, en laissant au commerce des peuples neutres toutes les facilités compatibles avec cet état d'hostilité auquel ils cherchent à demeurer étrangers.

"Mais il ne suffit pas que les belligérants aient la pensée intime de respecter toujours les droits des neutres ; ils doivent de plus s'efforcer de calmer par avance ces inquiétudes que le commerce est toujours si prompt à concevoir, en ne laissant planer aucun doute sur les principes qu'ils entendent appliquer.

"Un règlement sur les devoirs des neutres pourrait paraître une sorte d'atteinte à la souveraineté des peuples qui veulent garder la neutralité ; une déclaration spontanée des principes auxquels un belligérant promet de conformer sa conduite semble, au contraire, le témoignage le plus formel qu'il puisse donner de son respect pour les droits des autres nations.

"C'est dans cette pensée qu'après m'être concerté avec le gouvernement de Sa Majesté britannique, j'ai l'honneur de soumettre à la haute approbation de Votre Majesté la déclaration suivante.

"Je suis avec respect, Sire,
"de Votre Majesté le très-humble
"et très obéissant serviteur et fidèle sujet,
"DROUYN DE LHUYS.

"Approuvé :
"NAPOLÉON."

Déclaration relative aux neutres, aux lettres de marque, etc.

"S. M. l'Empereur des Français, ayant été forcé de prendre les armes pour soutenir un allié, désire rendre la guerre aussi peu onéreuse que possible aux puissances avec lesquelles Elle demeure en paix.

"Afin de garantir le commerce des neutres de toute entrave inutile, Sa Majesté consent, pour le présent, à renoncer à une partie des droits qui lui appartiennent, comme puissance belligérante, en vertu du droit des gens.

"Il est impossible à Sa Majesté de renoncer à l'exercice de son droit de saisir les articles de contrebande de guerre et d'empêcher les neutres de transporter les dépêches de l'ennemi. Elle doit aussi maintenir intact son droit, comme puissance belligérante, d'empêcher les neutres de violer tout blocus effectif qui serait mis, à l'aide d'une force suffisante, devant les forts, les rades ou côtes de l'ennemi.

"Mais les vaisseaux de Sa Majesté ne saisiront pas la propriété de l'ennemi chargée à bord d'un bâtiment neutre, à moins que cette propriété ne soit contrebande de guerre.

"Sa Majesté ne compte pas revendiquer le droit de confisquer la propriété des neutres, autre que la contrebande de guerre, trouvée à bord des bâtiments ennemis.

"Sa Majesté déclare en outre que, mue par le désir de diminuer autant que possible les maux de la guerre et d'en restreindre les opérations aux forces régulièrement organisées de l'Etat, elle n'a pas, pour le moment, l'intention de délivrer des lettres de marque pour autoriser les armements en course."

Le jour ou, des deux côtés de la Manche, cette déclaration fut rendue publique, le ministre des affaires étrangères écrivait à Londres : "Je me félicite vivement de la preuve éclatante que la France et l'Angleterre viennent de donner de leur bon accord dans la question si importante des droits réservés aux neutres pendant la guerre actuelle. L'harmonie qui s'est établie entre les deux cabinets sur un point où l'on aurait pu croire qu'il leur serait, malgré leur sincère envie d'y parvenir, extrêmement difficile de s'entendre, produira partout la meilleure impression et conciliera aux puissances auxquelles appartient l'initiative de cette généreuse résolution les sympathies des nations commerçantes dans le monde entier. Veuillez dire à lord Clarendon que le Gouvernement de l'Empereur apprécie comme il le doit l'esprit qui a présidé aux délibérations du gouvernement de la reine Victoria sur un sujet qui lui tenait particulièrement à cœur, et qu'il en considère le règlement, dans les termes où il s'est fait, comme un des meilleurs résultats de l'intime alliance des deux pays."

La confiance exprimée dans cette lettre ne fut pas déçue. L'accord si nouveau de la France et d'Angleterre sur les règles de droit maritime fut salué avec joie par les neutres, comme l'aurore d'un jour de justice et de réparation. Placés à l'abri des violences de la guerre, ils n'avaient plus à craindre d'être entraînés dans la querelle d'autrui, et ils demeuraient libres de poursuivre en paix, au milieu de combats auxquels ils étaient étrangers, leur commerce accoutumé, pourvu qu'aucune fraude n'appelât sur eux la sévérité des belligérants.

Les alliés, en notifiant aux divers gouvernements les dispositions qu'ils avaient adoptées, rappelèrent que le strict accomplissement des devoirs de la neutralité était la condition et la garantie du maintien des avantages que ces dispositions conféraient aux neutres. Tel était l'objet de la circulaire suivante qui fut adressée par le ministre des affaires étrangères à tous les agents de son département accrédités auprès des puissances non engagées dans la lutte. Elle porte la date du 30 mars :

"Monsieur, *le Moniteur* de ce jour publie la déclaration du Gouvernement français au sujet des neutres, ainsi que le rapport que j'ai présenté à l'Empereur en la soumettant à sa haute approbation. Vous trouverez ci-joint copie de ces deux documents.

"Le gouvernement britannique a promulgué, de son côté, la même déclaration.

"Au moment où les deux Etats prennent les armes pour la défense commune d'un allié, ils ne pouvaient donner une preuve plus éclatante de la parfaite conformité de leurs sentiments et de l'esprit de solidarité qui les unit, qu'en adoptant les mêmes résolutions dans une matière sur laquelle jusqu'ici leurs principes avaient été si différents.

"Pénétré de cette sollicitude que la France a toujours témoignée pour les neutres, le Gouvernement de l'Empereur s'était dès longtemps préoccupé des questions graves que la neutralité soulève, pour en préparer la solution dans le sens le plus favorable aux intérêts des peuples avec lesquels il demeure en paix. Je m'empresse de reconnaître qu'il a trouvé le gouvernement britannique animé des mêmes désirs, et déjà pénétré de la pensée de laisser les neutres en possession de tous les avantages que les nécessités indispensables de la guerre ne feraient point un devoir absolu de restreindre.

"C'est cette communauté de vues qui a dicté la déclaration adoptée par les deux gouvernements ; et je n'hésite pas à le dire, jamais un document de cette nature n'a été conçu dans des termes aussi favorables.

"L'intention de ne point délivrer de lettres de marque y est officiellement annoncée ;

"La nécessité du blocus effectif est admise ;

"Le pavillon neutre couvrira la marchandise, excepté pourtant la marchandise neutre restera libre sous pavillon ennemi :

"Tels sont les avantages qui vont être assurés au commerce pendant la guerre ; et même lorsqu'elle sera terminée, cette déclaration commune demeurera comme un précédent considérable acquis à l'histoire de la neutralité.

"Mais, si l'union intime de la France et de l'Angleterre a permis de consacrer un système aussi avantageux pour les nations neutres, il doit en résulter pour celles-ci une obligation plus stricte de respecter d'une manière complète les droits des belligérants. Nous avons donc raison d'espérer que les gouvernements neutres non seulement ne feront aucun acte qui puisse présenter un caractère hostile, mais qu'ils s'empresseront de prendre toutes les mesures nécessaires pour que leurs sujets s'abstiennent de toute entreprise contraire aux devoirs d'une rigoureuse neutralité.

"Je vous adresserai incessamment un projet de [illegible] dont la rédaction aura été concertée avec le gouver[illegible]

de Sa Majesté Britannique, pour notifier la dé-
ion présente au gouvernement auprès duquel vous
[illegible]."

elques jours plus tard, les pièces qui suivent
t adressées aux mêmes agents.

"Paris, le 5 avril 1854.

Monsieur, j'ai l'honneur de vous transmettre le
d'une note que vous voudrez bien adresser
diatement au gouvernement auprès duquel vous
ccrédité, pour lui faire connaître les principes que
ance et la Grande-Bretagne appliqueront aux neu-
ans le cours de la guerre actuelle, ainsi que la
tion qu'ont prise les deux gouvernements de ne
délivrer quant à présent de lettres de marque.
e représentant de Sa Majesté Britannique recevra
e d'adresser au gouvernement de . . une com-
cation analogue.
ous voudrez bien me transmettre la réponse du
rnement de . . dès qu'elle vous sera parvenue,
re les démarches nécessaires pour qu'elle soit con-
à la juste attente des deux gouvernements."

Projet de note.

e soussigné a reçu l'ordre de son gouvernement
sser à S. Exc. M. . . . . la communication sui-
:

. M. l'Empereur des Français et S. M. la reine
oyaume-Uni de la Grande-Bretagne vont se
er dans la nécessité de recourir à la force des
pour repousser les agressions dont l'empire otto-
st l'objet de la part du gouvernement de S. M,
ereur de Russie. Voulant, autant que possible.
uer pour le commerce les conséquences funestes
tat de guerre, Leurs Majestés ont résolu de ne
autoriser la course, quant à présent, par la dé-
ce de lettres de marque, et de faire connaître,
ême temps que cette résolution, les principes
es entendent appliquer à la navigation et au
erce des neutres dans le cours de cette guerre.
dans ce but que Sa Majesté l'Empereur des
ais a fait publier la déclaration ci-jointe, iden-
à celle que S. M. la reine du Royaume-Uni de la
de-Bretagne et d'Irlande a fait publier de son

En restreignant l'exercice de leurs droits de bel-
nts dans des limites aussi étroites, les gouverne-
alliés se croient fondés à compter sur les efforts
es des gouvernements qui demeureront neutres
cette guerre, pour faire observer par leurs sujets ou
aux les obligations de la neutralité la plus absolue.
nséquence, le Gouvernement de S. M. l'Empereur
rançais a la confiance que le gouvernement de .
cueillera avec satisfaction l'annonce des réso-
s prises en commun entre les deux gouverne-
alliés, et voudra bien, par une juste réciprocité,
r des ordres pour qu'aucun corsaire sous pavillon
ne puisse être armé, ni ravitaillé, ni admis avec
ises dans les ports de . . et pour que les sujets
toyens) . . s'abstiennent rigoureusement de pren-
art à des armements de ce genre ou à toute autre
re contraire aux devoirs d'une stricte neutralité."

nsi, jusque dans les détails de la notification
es firent de concert, la France et l'Angleterre
t à cœur de manifester par un langage identique
parfait accord. Cette union intime ne se démentit
endant la suite des événements. Si, dans l'appli-
n des règles posées en commun, quelques diver-
s se firent jour encore sur des points secondaires,
[illegible] facilement aplanies ou demeurèrent sans
équence. Malgré l'entente générale sur les prin-
, des opinions ou des habitudes particulières pou-
t, à certains égards, marquer la trace de pratiques
ngtemps opposées. Des instructions furent en-
es par les deux gouvernements aux commandants
eurs marines respectives afin d'atténuer les diffé-
s qui subsistaient et qui firent d'ailleurs le sujet d'un complément d'explications amicales échangées entre les cabinets de Paris et de Londres.

Les neutres profitèrent largement de toutes les facilités qui leur étaient accordées. Ils n'en abusèrent point, et pendant toute la durée de la guerre la France et l'Angleterre n'eurent pas à regretter leur généreuse initiative. Cette expérience, comme on devait s'y attendre, fut concluante. Le progrès des mœurs secondant la réforme des doctrines, les nouvelles règles éprouvées par la pratique des deux grandes puissances maritimes furent universellement acceptées comme un bien pour toutes les nations.

En Angleterre comme en France, les classes commerçantes, loin de voir avec jalousie la sécurité que ce régime libéral donnait à des intérêts rivaux, se félicitaient du développement général des transactions qui en était la conséquence et sentaient que tous étaient appelés à y trouver également leur avantage. L'exposition universelle de 1855, organisée à Paris pendant que nos armées de terre et de mer combattaient en Crimée et dans la Baltique, fournit, on s'en souvient, une preuve éclatante de la vigueur et du succès avec lesquels les travaux de la paix étaient poursuivis au sein même d'une guerre acharnée. Un tel spectacle était une gloire pour le siècle où il se produisait pour la première fois, et il devait inspirer une juste confiance dans l'avenir des idées dont il signalait le triomphe. De plus en plus, les cruelles nécessités de la guerre étaient circonscrites dans un cercle étroitement tracé, en dehors duquel l'humanité pacifique et industrieuse gardait ses droits.

Le système inauguré pour la guerre de 1854 répondait si bien à des besoins communs à tous les peuples, qu'il prit sans difficulté le caractère d'une réforme définitive du droit international. Au congrès de paix réuni à Paris en 1856, les plénipotentiaires qui eu pour mission de consacrer les résultats de la guerre se trouvèrent naturellement amenés à y comprendre la confirmation des règles qui avaient été observées par les puissances belligérantes à l'égard des neutres. Ce fut l'objet de la déclaration de Paris du 16 avril 1856, conçue en ces termes:

1° La course est et demeure abolie.

2° Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre.

3° La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi.

4° Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral ennemi.

A cette déclaration ont accédé toutes les puissances, excepté l'Espagne, le Mexique et les Etats-Unis de l'Amérique du Nord. Les deux premières ne firent des réserves que sur le droit d'armer des corsaires, mais elles donnèrent leur adhésion aux autres articles Quant aux Etats-Unis, ils auraient accepté la déclaration tout entière, si l'on y eût ajouté une clause relative à l'inviolabilité de la propriété privée sur mer.

Sauf ces restrictions, les arrangements conclus en 1854 entre l'Angleterre et la France sont tombés dans le domaine public, et placés désormais sous l'autorité du droit des gens.

Ce résultat était facile à prévoir. A l'ouverture de la guerre, dans le cours des négociations avec le cabinet de Londres, nous insistions, afin de désarmer sa résistance et de lever ses scrupules, sur le caractère temporaire des concessions que nous lui demandions; mais dans notre pensée ce régime, en apparence transitoire, était destiné à se perpetuer par la force des choses et d'un consentement unanime. En effet, lorsque des intérêts considérables se sont développés, pendant un certain temps, sous l'abri d'un système plus libéral, ils deviennent, à leur tour, les fermes appuis et les invincibles défenseurs du régime qui les à d'abord protégés.

DROUYN DE LHUYS.

ITALY.

My Lord, Florence, March 2, 1867.

With reference to your Lordship's despatch marked Circular of February 14, directing me to obtain official information respecting the Neutrality Laws of Italy, I have the honour to transmit herewith to your Lordship copies, accompanied by translations, of the laws in force upon this subject, as well as the Code of Regulations for the Italian Mercantile Marine, containing certain rules to be observed by the Superintendent of Harbours respecting the sojourn in them of belligerent vessels of war, which have been transmitted to me by the Italian Minister for Foreign Affairs.

I have, &c.,
Henry Elliot.

Circular of the Minister of Marine.

Turin, April 6, 1864.

In transmitting to Your Excellency the Royal Decree of to-day's date on the neutrality of the ports of the kingdom, the undersigned thinks it opportune to accompany it with the present circular, which is intended to serve as a rule for the practical application of the regulations contained in the same.

The report to His Majesty, which precedes the Decree itself, will make known to Your Excellency the fundamental principles of the international maritime law on which it is founded as also the general rules which guide it.

Such rules and such principles, having been recognized by the publicists of all nations and of all epochs, are moreover, borne evidence to by recent and analogous regulations which have emanated from the principal maritime powers during the last few years.

The state of neutrality which the Government of the King intend to observe with respect to Powers which find themselves in declared hostility to each other, imposes certain obligations on the belligerent parties, obligations which cannot be separated from the analogous rights which accompany them; and, therefore, in declaring the duties imposed by the most strict neutrality, it is necessary to mention, at the same time, the prerogatives which arise from such conditions. Thus, in forbidding Italian subjects from taking part in any way whatsoever to the advantage or disadvantage of the belligerent States; in preventing that in places on the sea shore any commercial operations should be carried out which could produce harm to the Powers which are at war against each other; in forbidding, under pains and penalties, that any citizens of the Kingdom should take service on board the belligerent ships, refusing them also in such a case any protection on the part of His Majesty's Government, and, on the contray, leaving them under the jurisdiction of the laws of the other parties; it was necessary, on the other hand, to avoid the seas within the territorial jurisdiction of the Kingdom serving as a field for hostile operations between the belligerent Powers, or the ports and places of anchorage along the extensive Italian coasts serving to afford means of armaments, or being used as secure bases for hostile operations.

It having been agreed, recognized, and stipulated by international treaties that foreign subjects ought to submit to all the laws and regulations which relate to public security, and to the police of the country in which they sojourn or are domiciled, it follows as a logical and natural consequence that the laws and prohibitions contained in Art. 4 ought to be considered to extend to foreign subjects who happen to be in the Kingdom.

The law of humanity, which suggests that in cases of danger even an enemy who was harmless should be assisted, finds its application in the 7th Art. of the accompanying decree. To those ships or privateers of the belligerents who should be driven by stress of weather into the ports of the kingdom, or who should there seek refuge to repair damages, or to procure provisions or commodities, to such ships it is impossible to refuse shelter and assistance. Nevertheless, the duties of humanity are confined to requirements necessary for safety of navigation, and do not extend to a request for means which could in any shape or manner increase the offensive or defensive force of the said ships.

Consequently, if in any port, roadstead, or coast belonging to Your Excellency there should come a ships of war, or beligerent privateers, for refuge against bad weather, or to repair damages it has suffered, or to procure provisions or materials indispensable for pursuing its voyage with safety, Your Excellency, in virtue of Art. 10, could not refuse such requests, but would decline, according to the terms of Art. 9, to accede to any demand which could in any way increase the means of military offence or defence of the said ships.

The power of landing at or arrival in the harbours or coasts of the kingdom cannot, however, be granted to belligerent ships accompanied by prizes, except in the sole case of stress of weather. In the event of their being in need of repairs or provisions, they must first agree to set their prizes at liberty, and then the requests will be granted, but otherwise every assistance must be refused, the presence of a prize constituting a continuance of hostile operations within the waters under the territorial jurisdiction of a neutral country.

The second paragraph of Art. 10 provides that supply of coal can only be granted 24 hours after the arrival of the belligerent ship which has made the demand. In this regulation Your Excellency will perceive that the undersigned has in view to prevent these sort of supplies serving for immediate offensive purposes against ships of the other belligerent party which might be followed by the one which made the demand for fuel, even though it might have been requested for security of its navigation. The period of 24 hours specified in the said article may, in special cases, be extended by the authority of Your Excellency, but may never be reduced.

The regulation of Art. 11 of the subjoined Royal Decree requires, besides its exact observance, that the marine authorities should use all possible care to avoid, in the way they carry it out, any opportunity for immediate hostilities between the ships of the two belligerent parties. In interpreting the Art. above mentioned the state of the weather must be taken into consideration in determining the interval allowed to elapse between the departure from port of the first ship and that of the second. The reciprocal conditions of sailing and steam ships must be kept in view, the sailing ship, in such a case, being first required to depart rather than that one possessed of mechanical motion, except in the event of the former being a mercantile steamer and the latter a public armed ship or a privateer.

On the arrival at anchorage of a ship-of-war of whatsoever nation, or in whatsoever locality of the kingdom, a copy of the accompanying Royal Decree shall be conveyed to it. If the said ship belong to a belligerent Power there shall be also given to it a copy of the enclosed schedule, with the request that the various columns may be filled up in the manner indicated. The same system will be followed towards privateers.

A copy of the said schedule will, as soon as it is filled up, be immediately forwarded to the undersigned in the proper way, the captains and officers of the port not omitting individually to inform the proper authorities under whom they are placed in order of departmental seniority.

The presence of considerable maritime forces in certain ports of the kingdom, as indicated by Art. 1 and specified in Art. 13, might in some cases hinder the free action of the Government, and the undersigned following the example of the measures prescribed by other powers on this head, proposes that His Majesty should give his assent to the rules laid down in the accompanying articles.

While the rules contained in Article 12 should be scrupulously observed, the naval commandants of the

specified in Article 13, must use every precau-
applying them, in order to avoid misunder-
gs and to prevent the general maritime regula-
from being viewed as bearing a character of
t.

rtheless, the captains of Ports, of which mention
above, upon seeing the approach of a squadron
sing more than three vessels of war, shall be
not to await their entrance into harbour before
nicating to them the disposition aforesaid, but
eet them outside the harbour as soon as it shall
ifest that they intend to anchor, and thus inform
n good time of the rules which obtain in that
ith respect to the presence of foreign naval
ents.

ld the squadron comprise three ships or less,
e captains of the ports, following the directions
cle 14, shall go on board of the senior officer's
r the man-of-war should she be alone, and com-
te to him the provisions of Article 12 with
to the stay of the squadron in the harbour.

n the second paragraph of Article 12 Your
ency will perceive that with the permission of
vernment, ships of war, three or less in num-
ay be allowed to sojourn for a longer period
ght days in the ports mentioned in Article 13.
refore, should the commander of the squadron
s a wish to prolong his stay beyond the period
bed by the rules, Your Excellency will inform
dersigned of the same as soon as possible, and
a reply before requesting the commander to take
parture, even though the period of eight days
hereby exceeded.

r Excellency will gather from Article 8 that
vernment are desirous of making an exception
rules laid down by the Royal Decree in favour
se vessels of war whose mission is exclusively
fic; and this exception, made some years ago,
e extended also to vessels belonging to a belli-
state.

s exception refers, however, solely to those
whose mission is altogether beyond suspicion,
ready recognized by the Government by diplo-
means, and has been assented to by them.

uch cases the respective Captains of Ports will
ised in time by the Ministry of Marine itself.

enever any doubt shall be entertained by the
authorities as to the interpretation or application
various cases contemplated in the articles of the
egree, they must refer at once to the Ministry in
g, and ask for instructions and explanations.

(Signed) CUGIA.

RT ADDRESSED TO THE KING BY THE MINISTER OF MARINE.

Turin, April 6, 1864.

THE Paris convention of April 16, 1856, has
ished new bases of public laws in naval war with
t to neutrals and to belligerent Powers.

perty belonging to the subjects of a State which
us neutral in war, even if embarked upon hostile
is now respected, nor does it constitute any
, in most cases, prize of either belligerent.

e obligations undertaken by the Powers signitary
above convention, and by the countries adher-
to it, not to issue letters of marque to merchant
have also modified those principles of Maritime
which refer to privateers and their prizes.

ese principles, however, intended to diminish the
sustained by private individuals during a mari-
war, were not accepted by all naval Powers
criminately, and for that reason the laws regard-
rivateering and its prizes contained in the various
and regulations of maritime law could not be
ated, being kept in reserve for such cases as
of a war with one of the countries which had
ed its adherence to the principles laid down in
Paris convention.

is explains the motives why the Maritime Powers
framed these new bases of law should now also
regulations regarding the armaments of priva-

The conditions of the portions of North America at war induced, at the commencement of that struggle, the French Government to declare in a note dated 10th June 1861, and also the British Government in a letter of 12th January 1862, from the Foreign Office to the Lords of the Admiralty, what principles were to serve as a basis of neutrality to those Governments during the disastrous war in America.

Recently, however, and in spite of this declaration, hostile enterprise was carried into the waters of the neutral European Powers by certain vessels pertaining to these belligerents, which also sought to repair damages and obtain provisions in neutral ports.

Although the position of this kingdom may exclude the supposition that any of the armed vessels or privateers of the belligerent States of America might ever have occasion to approach the Italian coast under circumstances calculated to cause trouble to a neutral Power.

This supposition assumes another aspect when the movements of the ships of war belonging to the Northern Powers of Europe are considered now even in a state of armed warfare.

These facts will doubtless compel the attention of Your Majesty's Government to the consequences which may ensue to a neutral State, and also to provide that while the duties of neutrality are observed the rights which such a State ensures to the neutral Powers be equally respected.

While compiling the project of law which I have now the honour to submit to Your Majesty, besides detailing the principles which should regulate the conduct of the maritime authorities, the seafaring population, and Your Majesty's subjects to preserve the strict limits of neutrality now to be the guide of the Italian Government towards the Powers at present at declared war, I think it right to declare what regulations are already in force in many harbours of the kingdom, sanctioned by previous law, and common to all maritime nations, whether as a special right obtaining on certain parts of the coast (Quale perogativa propria su certi punti speciali delle coste), or as being recognized by all those who have ever treated of International Maritime Law.

Whenever Your Majesty will approve of the considerations which are the basis of the scheme of the following decree, I would humbly hope that Your Majesty will deign to confer upon it Your Royal sanction.

E. CUGIA,
Minister of Marine.

VICTOR EMANUEL II., ELECT KING OF ITALY.

With reference to the Royal Patents of 24th November 1827, which determine port regulations;

With reference to the Penal Law for the mercantile marine, dated January 15th, 1827:

With reference to the Royal Decree of December 22nd 1861, which extends the laws and regulations of the Mercantile Marine in force in the ancient provinces to all new provinces of the kingdom;

Considering the state of the existing relations between Italy and other maritime States which are in open hostilities;

Considering the rights reserved by International Maritime Law respecting certain special parts of the seaboard of any maritime State, tending to maintain and guarantee the state of neutrality of that kingdom towards belligerent powers; and to render valid, under all circumstances, those rights which might spring from or be derived from such a state (of neutrality), and also to preserve intact its liberty of action;

On the proposal of our Minister of Marine, in concert with our Minister for Foreign Affairs,

We have and do decree;

Article I.—It shall not be allowed for any ship of war or privateer belonging to a belligerent state to enter into or remain with prize in any port or harbour of the kingdom, except in case of necessity.

Article II.—In such exceptional cases, and under the conditions contained in the preceding Article,

ships of war and privateers must leave the coast of the kingdom as soon as the cause which forced them to seek shelter shall have been removed, and according to the dispositions of Article XI.

Article III.—No sale, exchange, transfer, or gift of objects of plunder shall be made under any pretext in the ports, harbours, or coasts of the kingdom.

Article IV.—No Italian subject shall take commission from either belligerent power to arm ships for war, or to accept letters of marque to cruise, or assist in any way in fitting out, arming, or preparing for war a vessel or privateer of the said belligerents.

Article V.—According to the 35th Article of the Penal Code for the Mercantile Marine, no Italian subject shall be enrolled or take service on any ship of war or privateer belonging to either belligerent.

Article VI.—No Italian subjects guilty of contravention of the rules laid down in the preceding Articles 4 and 5, or who shall commit any act against one of the belligerent powers, contrary to the duties attendant upon the neutrality maintained by the Italian Government towards the said parties, can claim protection against the acts or measures of whatever nature which the belligerents may deem right to enforce against them, and besides, they incur the penalties mentioned in Art. 5 of the present decree, according to the dispositions of the 80th Art. of the Penal Code for the Mercantile Marine, dated January 13th, 1827.

Article VII.—No belligerent vessel of war or privateer shall remain more than 24 hours in any port, harbour, or anchorage in the kingdom or adjacent waters, even though alone, except in cases of necessity caused by stress of weather, for repairs, or for want of necessary provisions for the safety of navigation.

Article VIII.—Vessels of war belonging to a friendly Power, even though belligerent, can anchor and remain in the ports and harbours of the Kingdom, when their mission is purely scientific.

Article IX.—In no case shall a belligerent vessel of war make use of an Italian port for warlike purposes, or for providing itself with arms and ammunition.

Neither shall it under pretext of repairs do anything to increase its force in action.

Article X.—There shall not be furnished to belligerent vessels of war or privateers other than provisions in portions for the subsistence of the crew, and the mere means for making those repairs actually necessary for the safety of the vessel.

Belligerent vessels of war and privateers wishing to coal can only do so 24 hours after their arrival.

Article XI.—When vessels of war, privateers, or merchant vessels of both belligerent Powers shall meet in the same port or harbour of the Kingdom, there shall be an interval of 24 hours between the departure of any vessel belonging to one Power and that of any vessel of the other Power.

The local maritime authority has power to prolong this interval according to circumstances.

Article XII.—In ports considered as naval fortresses or military fortresses; in anchorages where military or naval arsenals, dockyards, or other similar buildings, only three vessels of war belonging to the same Power shall be there at once, and then for no period exceeding eight days.

This period can only be extended in cases of necessity or for the sake of repairs, under formal permission of His Majesty's Government, to whom application must be made by the local maritime authorities through the Minister of Marine.

Article XIII.—The ports and places of anchorage treated of in the preceding Article are,

Genoa and adjacent Waters towards the shore of Foce; the Gulf of Spezia, Leghorn; Portoferraj; Naples; Baja; Castellamare; Gaeta; Messina (with the anchorages of Faro and Reggio in Calabria); Milazzo; Syracuse; Augusta; Palermo; Frapa Taranto; Brindisi; Ancona; Cagliari; Island Maddalena.

Article XIV.—The Local Maritime Authorities the plans mentioned in the preceding article shall, the arrival of foreign vessels of war, present to th commanders, or commander of the squadron, a copy the present regulations for their information, a request them to conform to them.

Article XV.—All maritime Authorities in Kingdom are expected to adopt strictly all the m sures prescribed in the present decree, which sh take effect from the day of its publication in various parts of the Kingdom.

Article XVI.—All dispositions at present in for and which are contrary to those contained in present degree, are hereby abrogated.

We command that this present decree, furnish with the great seal and registered at the court "*conti*," be inserted in the official collection of Laws a Decrees of the Kingdom of Italy, desiring all it m concern to obey it and make it obeyed.

(Signed) VITTORIO EMANUELE.
(Countersigned) E. CUGIA.

Turin, April 6, 1864.

EXTRACT FROM ITALIAN NAVAL CODE, CHAPTER V —OF THE NEUTRALITY OF THE STATE TOWAR BELLIGERENT POWERS.

In case of war between Powers towards which State remains neutral, privateers or vessels of w with prizes shall not be received into the harbours roadsteads, except in cases of stress of weather.

They will have to leave as soon as the danger ceased.

No ship of war or privateer belonging to a be gerent will be allowed to remain longer than 24 ho in a port, harbour, or roadstead of the State, or in adjacent waters, even when alone, except in case necessity arising from bad weather, of shipwreck, or an absence of the means necessary to carry on navigation with safety.

In no case will they be permitted during their s in the port, harbour, or roadstead of the State to s exchange, or barter, or even give away any of prizes (taken in war).

The ships of war of a friendly Power even wh belligerent are permitted to touch or even to rema in any harbour, port, or roadstead of the State condition that the object of their mission be exc sively a scientific one.

In no case can a belligerent ship avail itself of Italian port for the purposes of war, or of obtaini arms and munitions. It shall not be able under pretence of repairs to execute any alterations or oth works designed to augment its warlike force.

Nothing shall be furnished to vessels of war or belligerent privateers beyond articles of food a commodities, and the actual means of repair necessa to the sustenance of their crews and the safety of th navigation.

Vessels of war or belligerent privateers wishing fill up their stores of coal cannot be furnished w the same before 24 hours after their arrival.

In the case in which vessels of war, whether p vateers or merchantmen of the two belligerent natio are both together in a port, harbour, or roadstead the State, there shall be an interval of at least hours between the successive departures of the ves of one belligerent and those of the vessels of other.

This interval can be increased according to circumstances brought before the maritime authorit of the place.

The capture of prizes as well as any other of hostility between two belligerent ships wit the territorial waters or the adjacent waters of islands of the State will constitute a violation territory.

THE NETHERLANDS.

eccived from Her Majesty's Legation at the Hague.)

te from the Minister for Foreign Affairs to His Majesty's Chargé d'Affairs.

La Haye, le 6 Mars 1867.

Le S.S., etc., etc., a eu l'honneur de recevoir la note M. Ward, etc. etc. lui a adressée sous la date du de ce mois, et dans laquelle il demande au nom de Gouvernement des renseignements au sujet des , réglements ou autres moyens, dont celui des rs-Bas pourrait eventuellement faire usage afin npêcher, en dedans des frontières du Royaume des s dont des Puissances belligérantes pourraient se ndre comme d'une violation des devoirs de la tralité.

En réponse le S. S., etc., etc., s'empresse de porter connaissance de M. Ward qu'il n'existe pas dans Royaume du Pays-Bas une collection de lois ou lements concernant les droits et devoirs de la tralité en général, ni de lois ou ordinances spéciales r l'une ou l'autre partie de cette matière import- e du droit publique externe. Le Gouvernement t, ainsi qu'il sera dit plus loin, faire usage des cles 84 et 85 Code Pénal ; mais, les cas exceptés ceux-ci trouvent leur application, des dispositions islatives proprement dite n'ont pas été prises en de la neutralité de l'état et pour mettre le uvernement à même de sauvegarder cette neutralité, le sérvir contre ceux qui tenteraient de la violer.

En général on peut dire que dans aucun pays la ière surmentionnée n'a été réglé ni mise sous le trôle des lois et si la Grande Brétagne et les Etâts- is ont leur "Foreign Enlistment Act," cette loi est ne portée fort limitée. Jusqu'ici le Gouvernement Pays-Bas n'à pas cru qu'il fut nécessaire ou ortun, de renfermer dans une ou plusieurs lois ce a trait aux droits et devoirs de la neutralité ; mais est borné a suivre scrupuleusement les principes de it des gens moderne de l'Europe et à faire interer s la Gazette Officielle (ainsi que par exemple la nce et la Grande Brétagne l'ont fait également en 61 et plus tard) des avertissements qui fixent tention des sujets Neerlandais sur le danger du nsport de contrebande ou de dépêches, de la viola- n d'un blocus effectif, d'exercer la course ou d'accepter lettres de marque. On y régle également l'ad- sion dans nos ports des navires de guerre belli- ants et un resumé des instructions spéciales oyées aux gouverneurs des colonies Neerlandaises de la guerre civile aux Etats-Unis, a été com- niqué à la Légation Britannique sous la date du 17 cembre 1861.

L'année dernière ces avertissements ont reçu plus tendue et de précision ; le Gouvernement a pris en re l'engagement de veiller à ce que l'equipement de sseaux de guerre pour les parties belligérantes n'ait lieu dans les Ports Néerlandais. Un exemplaire la Gazette Officielle du 20 Mars 1866, renfermant avertissements, se trouve ci-annexé (une erreur ant glissée dans le préambule, elle a été rectifiée s la Gazette ci-jointe du 21 Mars).

Quant aux moyens coactifs dont le Gouvernement urrait disposer pour empêcher des violations de sa tralité, les articles 84 et 85 du Code Pénal peuvent si dans quelques cas servir à ce but. Ceux par mple, qui tacheraient d'équiper ou de vendre des sseaux de guerre dans nos ports, pour le compte des ligérantes pourraient être poursuivies en vertu de articles ; les navires alors seraient saisis comme ce de conviction et par la même leur sortie serait

Le S.S. prie M. Ward de communiquer ce qui cède a son Gouvernement en ajoutant qu'il serait t agréable à celui des Pays-Bas d'apprendre quels nt les articles qui, aux yeux du Cabinet de Londres, ivent être rangés parmi ceux designés sous le nom contrebande de guerre.

Le S.S. prie M. Ward, etc., etc., etc.

(Signé) De Zuylen de Nyevelt.

Translation of Proclamation.—Ministry of Foreign Affairs.

As war is now existing between Brazil (in league with the Argentine Republic and Uruguay) and Paraguay, as well as between Spain and Chili, while Peru has declared war against Spain, the Minister of Foreign Affairs and the Minister of Justice are empowered by the King to advise by these presents all inhabitants of this kingdom by no means to meddle with privateering and to accept no foreign Letters of Marque. Should Netherlanders who practise any such privateering business or lend a hand in it be pursued before the Dutch authorities, the affairs of such people will be treated as criminally hostile, and will receive the punishment awarded by the law.

(Signed) The above-mentioned ministers,
E. Cremers,
The Hague, March 17, 1866. Pické.

In consequence of the commands of the King, the Ministers of Foreign Affairs, of Justice, and of Marine bring to the knowledge of all whom it may concern, that for the preservation of a complete neutrality during the war between the powers mentioned in the previous amendment, the following determinations have been resolved upon:—

Article I.—No ships of war or privateers belonging to one of the belligerent powers with prizes shall be allowed to come into Dutch harbours or estuaries or remain there to refit, unless they are overtaken by evident necessity, such as misfortune at sea or want of provisions. They shall, moreover, so soon as the cause which delayed them be overcome, go on their way as speedily as possible.

Article II.—Proclaiming prizes, the selling, bartering, or giving away of all prizes and of objects coming out of them, also of plundered goods is forbidden in the harbours or estuaries of the Netherlands. It is also forbidden to unrig and sell ships of war or cruizers of the belligerent parties, also privateers (so far as these are admitted), unless the Government in ordinary circumstances gives judgment that the sale can take place without danger to the neutrality of the state.

Article III.—Privateers, even without prizes, are not admitted into Dutch harbours and estuaries, except in the cases specified in Article I. The conclusion of that Article is also applicable to this one.

They must take in no more provisions that they require for immediate use, of coal hardly as much as is necessary to supply their wants for 24 hours.

Article IV.—The ships of war of the belligerent parties, provided they submit to the international regulations for their admission into neutral ports, may remain for unlimited time in Dutch harbours and estuaries ; they may also provide themselves with an unlimited quantity of coal.

The Government, however, reserves to itself the right, whenever it is thought necessary for the preservation of neutrality, to limit the duration of such stay to 24 hours.

Article V.—When ships of the belligerent parties (either ships of war, cruizers, or merchantmen) find themselves at the same time in the same harbour to refit, or in the inner waters of the country, a period of at least 24 hours must elapse between the departure of a ship of one belligerent party and the following departure of a ship belonging to another belligerent.

This period of time may be lengthened according to circumstances, by the maritime authorities of the harbours.

Article VI.—It is forbidden to furnish to the ships of war of either of the belligerent parties weapons or ammunition as well as to aid in any way to the increase of his weapons or accoutrements.

The above-named ministers,
E. Cremers,
The Hague, March 17, 1866. Pické.

The Minister of War charged ad interim with the Department of Marine.
(Signed) J. W. Blanken.

The Minister of Foreign Affairs thinks it his duty in consequence of the war existing between the above-mentioned powers in South America to call the attention of shipowners, manufacturers, and freighters to the dangers and difficulties to which they expose themselves if putting themselves in opposition to their duties to the neutral powers, they do not respect an actual blockade or transport contraband of war, soldiers or despatches intended for one of the belligerents.

In these circumstances the parties concerned will be exposed to all results proceeding herefrom without any protection or intervention from the Netherland Government, whatever claims they may make.

Also the Government will keep strict watch against the fitting out in this country of armed ships on behalf of the belligerent parties or the taking part therein Netherlanders.

The above-named Minister,
(Signed) E. CREMERS.

The Hague, March 17, 1866.

ARTICLES 84 ET 85 DU PÉNAL (CODE NAPOLÉO
LIVRE III., TITRE I.

Article 84.—Quiconque aura par des actions host non approuvées par le Gouvernement exposé l'éta une déclaration de guerre, sera puni du bannissem et si la guerre s'en est suivie de la déportation.

Article 85.—Quiconque aura par des actes n approuvées par le Gouvernement exposé des Fr çais à éprouver des réprésailles sera puni du banni ment.

PORTUGAL.

MY LORD, Lisbon, February 26, 1867.

IN reply to your Lordship's despatch marked circular, of the 14th instant, instructing me to procure information respecting the Neutrality Laws in Portugal, I have the honor to state to your Lordship that I have this day received from the Portuguese minister a note, of which a copy, together with a translation by Mr. Duff, is herewith transmitted. Your Lordship will perceive that its information is restricted to furnishing me with copies of the Portuguese declarations of neutrality, which are already in the possession of Her Majesty's Government.

I have therefore requested further information in a note, of which I beg also to enclose a copy, as to what are the laws, regulations, or any other means at the disposal of the Portuguese Government for preventing within their territory any acts which would be violations of the Portuguese neutrality laws, as contained in the declarations of neutrality which M. Cazal Ribeiro has transmitted to me.

I have the honor to be, &c.
A. PAGET.

The Right Hon. Lord Stanley, M.P.,
&c. &c. &c.

Foreign Department, Lisbon,
February 25, 1867.
(Recd. 26.)

MOST ILLUSTRIOUS AND EXCELLENT SIR,

I RECEIVED the note which your Excellency was pleased to address to me on the 19th instant, wherein you inform me that inasmuch as Her Majesty's Government had appointed a Commission to inquire into the Neutrality Laws in England, and were desirous to obtain information respecting the laws, regulations, or any other measures that may have been adopted in other countries upon this subject, they had instructed your Excellency to point out to them what were the laws and regulations of Portugal for the purpose of preventing, within the Portuguese territory, any acts that might be considered to be a violation of the laws of neutrality.

And as your Excellency requested me to forward to you copies of the laws and regulations to which you refer, as well as any other information that I might be able to furnish upon this point, I have the honour to state to your Excellency that as Portugal professes the most liberal principles with regard to neutrality, and as it is desirous to co-operate towards the consolidation of those principles, and the securing of the freedom of the maritime trade and navigation of neutral powers, it did not hesitate, so far back as the year 1782, to accede to the declaration made by Russia on the 28th of February 1780 to several powers, and to agree in the convention entered into with that empire, on the 12th of July of the above-mentioned year of 1782, to identical principles with those which are laid down in the second, third, and fourth articles of the declaration of the Congress of Paris of the 16th of April 1856, on maritime law, a declaration to which Portugal fully and entirely adhered, because it was in accordance with the doctrines which it has for so ma years professed with regard to neutrality.

Before the adhesion of Portugal to the declarati of the 16th of April 1856, to which I allude, and the time of the eastern question, the decree of the of May 1854 (of which a copy is enclosed) was pu lished in order that the most strict and absol neutrality should be observed in this kingdom, regard of those powers which were then in a state war.

On the 29th of July 1861 the Portuguese Gove ment being desirous, under the circumstances whi then occurred with respect to the United States America, to enforce a compliance with the princip set forth in the Declaration of Paris of the 16th April 1856, published the decree of that date, which I also forward the enclosed copy to yo Excellency.

Finally, by the decree of the 2nd of July 1856, the occasion of the breaking out of the war betwe Italy and Austria, as well as between Russia, t empire and other States of Germany, and of which copy was sent to the several chiefs of missions Portugal, in order that they should communicate t provisions contained therein to the Government which they were accredited, your Excellency will s what are the neutrality laws now in force in Portug

I avail myself, &c.
Sir A. Paget, (Signed) CAZAL RIBEI
&c., &c., &c.

British Legation, Lisbon,
M. LE MINISTRE, February 26, 1867.

I HAVE the honor to acknowledge the receipt your Excellency's note of yesterday's date respecti the Neutrality Laws of Portugal, and to thank yo Excellency for the documents with which you ha been good enough to furnish me.

There is one point, however, upon which H Majesty's Government are most desirous of informati to which your Excellency's note and the enclosures contains do not refer, namely, what laws or regu tions, or any other means, are at the disposal of t Portuguese Government for preventing within territory any acts which would be violations of t Portuguese neutrality laws, as contained in the dec rations of neutrality which your Excellency h transmitted to me. If your Excellency would sup me with this information I should be greatly oblige

I avail myself, &c.
H. E. M. Cazal Ribeiro. (Signed) A. PAGET.

MY LORD, Lisbon, March 29, 1867.

WITH reference to my despatch of the 26 ultimo, I have the honor to transmit to your Lor ship a copy, with translation by Mr. Duff, of a furth note which I have received from the Portugu Minister respecting the Neutrality Laws and the enforcement in Portugal.

I have the honor to be, &c.
The Right Hon. Lord Stanley, M.P. A. PAGET.
&c. &c. &c.

Foreign Department, Lisbon,
March 18, 1867.
(Received 22nd.)

Most Illustrious and Excellent Sir,

I had the honor to receive the note which your Excellency was pleased to address to me on the 26th of February last, requesting to be informed, in compliance with the wishes expressed by your Government, what laws or means does the Portuguese Government possess to enable it to prevent within its territory any acts of violation of neutrality.

In reply, it is my duty to state to your Excellency that the laws and regulations in the matter are those which were enclosed in my note of the 25th of that month, or were mentioned in those documents, and the means of execution in the case of any violation of neutrality are, criminal proceedings, the use of force, complaints addressed to foreign Governments, or any other means in order to meet some particular occurrence.

I avail myself, &c.
Sir A. B. Paget, &c. &c. &c. (Signed) Cazal Ribeiro.

PRUSSIA.

(Received from Her Majesty's Embassy at Berlin.)

Note from the Minister of Foreign Affairs to Her Majesty's Ambassador.

Berlin, March 11, 1867.

The undersigned has the honour to state in reply to the note of Lord Loftus, &c., of the 15th ultimo, that the decrees contained in the Prussian code of laws for preventing, during a war between foreign states, acts on Prussian territory, which could be construed as an infringement of neutrality, are partly direct and partly indirect.

A direct decree is contained in section 78 of the Code of Punishments of the 14th April 1851, by which hostile acts committed by a Prussian in his own country or abroad, or by a foreigner during his residence in Prussia, against a foreign state or its ruler, are punishable, if the same acts committed against the King of Prussia would be held to be high treason. But with respect to acts committed against non-German States, this decree is only enforced when reciprocity is guaranteed by public decrees or treaties.

The punishment consists in imprisonment in the house of correction for from two to 10 years; but under extenuating circumstances, in confinement for one to 10 years. Should the intention be discovered before the act is carried out, confinement from six months to three years.

It is stated in section 61 of what nature these hostile acts must be to render them liable to punishment, viz., every attempt which has for its object :—

1. To murder the king, to take him prisoner, to deliver him into the power of the enemy, or to render him incapable of governing, or

2. Forcibly to alter the succession to the throne, or the constitution of the State, or

3. To incorporate either entirely or partially the territory of the Prussian State into a foreign State, or to separate a portion of territory from the whole.

Furthermore, in section 111, whoever enlists or causes the enlistment of a Prussian in a foreign millitary service will be punished with imprisonment for from three months to three years. The attempt to commit this act will be punished in the same manner.

Under the head of indirect preventative measures against breach of neutrality come all those laws which enable the Government generally to oppose the maturing of acts of violence within the territory of the State. The following clauses of the book of the Penal Code apply to this.

§ Whoever assembles or commands armed bodies of men without authority, or who furnishes with arm or the necessaries of war, a body of men whom he knows to be assembled without the permission of the law, will be punished with imprisonment not exceeding two years.

Whoever takes part in such armed meeting, has rendered himself liable to imprisonment for a term not exceeding one year.

§ 340.

2. Whoever secretly, or in defiance of the authorities, stores up arms or ammunition, it not being his trade, will be punished with a fine of 50 Rths. or six weeks' imprisonment. In these cases a confiscation of the stores takes place.

The undersigned, &c.,
For the Minister of Foreign Affairs,
(Signed) Thile.

RUSSIA.

My Lord, St. Petersburg, August 29, 1867.

With reference to your Lordship's despatch circular, of February 14, instructing me to ascertain and report what laws, regulations, and other means the Russian Government possess for preventing acts within its territories of which belligerents might complain as a violation of the duties of neutrality, I have the honour to enclose a copy of a note which I have received from M. de Westmann, stating that with the exception of Article 259 of the Russian Penal Code, which forbids Russian subjects to afford military succour to any Power in a state of war with a Government allied to that of Russia, there are no laws existing in this country of the nature alluded to in your Lordship's despatch. A translation of the Article of the Penal Code referred to is enclosed.

I have, &c.
(Signed) Andrew Buchanan.

The Lord Stanley, M.P., &c. &c. &c.

St. Petersburgh, le $\frac{14}{26}$ Avril 1867.

M. l'Ambassadeur,

En réponse á la note que vous avez bien voulu m'adresser le 26 Février, j'ai l'honneur d'informer votre Excellence qu'à l'exception du § 259 du Code Pénal de l'Empire, qui contient une défense aux sujets Russes de favoriser les succès militaires d'une puissance en guerre avec un gouvernement allié de la Russie, la législation Russe ne renferme pas de dispositions, ayant pour but d'empêcher sur le territoire de la Russie l'accomplissement d'actes dont les puissances belligérantes pourraient se plaindre comme d'une violation du principle de neutralité.

Agréez, &c.
(Signé) Westmann.

Translation.—§§ 259. Penal Code of Russia.

If any Russian subject in time of peace shall by open force attack the inhabitants of a neighbouring state or those of any other foreign country, and shall thereby subject his own country to the danger of a rupture with a friendly power, or even to an attack by such foreign subjects on the territory of Russia, for such a crime against international law, the offender and all those who participate voluntarily in his enterprise, with a knowledge of its objects and illegality, shall be sentenced to lose all their civil rights, and be condemned to hard labour in a fortress for a term of eight to ten years.

SPAIN.

(Received from Her Majesty's Legation at Madrid.)

Note from the Minister for Foreign Affairs to Her Majesty's Minster.

Translation.

SIR, Palace, 22nd February 1867.

I HAVE received the note which your Excellency addressed to me on the 17th instant, requesting, in the name of your Government, a copy of the Laws and Regulations in force in the Peninsula concerning Neutrality.

In this matter Spain has always adapted herself to the principles of International Right, and solely on the occasion of the late war in the United States did Her Majesty's Government issue a decree on the Neutrality to be observed by Spanish subjects during that contest.

Of that document (the only one existing on the subject) a copy has been made which I have the honour to transmit to your Excellency in answer to your above-mentioned note.

I avail, &c.

(Signed) E. D. CALONGE.

H.B.M. Minister Plenipotentiary.

Translation.

Royal Decree concerning Neutrality in the United States War, issued by H. C. M., on the 17th June 1861.

Taking into consideration the relations which subsist between Spain and the United States of America, and the propriety of causing no detriment to the reciprocal sentiments of good understanding on account of the grave events which have happened in that Republic, I have resolved to maintain the strictest neutrality in the contest entered into between the Confederate States of the South and the Federal States of the Union ; and in order to avoid the prejudice which might result to my subjects and to navigation and commerce, in consequence of the want of clear dispositions by which to regulate their conduct, in accordance with my Council of Ministers I decree the following :

Art. 1. The fitting-out, supplying, and equipment of any privateer in any of the ports of the monarchy is prohibited, whatever may be the flag which she may hoist.

Art. 2. The proprietors, masters, or captains of merchant vessels are also prohibited from receiving letters of marque, and from contributing in any way to the armament and equipment of vessels of war or privateers.

Art. 3. Ships of war or privateers with prizes are prohibited fromentering and remaining for more than 24 hours in the ports of the monarchy, except in the case of forced arrival.

When the latter shall occur, the authorities shall watch the ship, and shall oblige her to put to sea as soon as possible, without permitting her to supply herself with anything more than that which is necessary for the moment, but under no circumstances with arms or with munitions of war.

Art. 4. Articles taken from prizes shall not be sold at the ports of the monarchy.

Art 5. The transport of all articles of commerce under the Spanish flag is guaranteed, except when intended for the blockaded ports.

The carrying of effects of war and of papers or communications for the belligerents is prohibited. Contraveners will be responsible for their own acts, and will have no right to the protection of My Government.

Art. 6. All Spaniards are prohibited from enlisting in the belligerent armies, and from engaging themselves for service in vessels of war or privateers.

Art. 7. My subjects will abstain from any act which, by violating the laws of the kingdom, might be considered contrary to neutrality.

Art. 8. Contraveners of the above orders will have no right to the protection of My Government, they will suffer the consequences of the measures taken by the belligerents, and will be punished according to the laws of Spain.

SWEDEN.

(Received from Her Majesty's Legation at Stockholm.)

Note from the Minister for Foreign Affairs to Her Majesty's Minister.

MONSIEUR, Stockholm, le 23 Fevrier 1867.

POUR satisfaire à la demande que vous m'avez faite, Monsieur, par la note que vous m'avez fait l'honneur de m'adresser le 19 ct., je m'empresse de vous informer que les dispositions de la déclaration du Congrès de Paris en date du 16 Avril 1856, et de l'ordonnance ci jointe en date du 8 Avril 1854, sont les seules ici en vigueur en matière de neutralité et que, du reste, il est chez nous admis en principe que là on il n'existe par de loi on pacte positif pour régler les droits et les devoirs des neutres en tems de guerre, les règles on principes que l'usage général des nations a consacrés doivent trouver leur application.

Veuillez agréez, Monsieur, &c.

(Signé) MANDERSTRÖM.

Monsieur Jerningham.
&c. &c. &c.

ORDONNANCE DU ROI.

Relativement à ce qui doit être observé, pour la sureté du commerce et de la navigation de la Suède en temps de guerre entre des Puissances étrangères.

Donnée à Stockholm le 8 Avril 1854.

NOUS, Oscar, par la grâce de Dieu, Roi de Suède et de Norvége, des Goths et des Vandales, savoir faisons : qu'ayant reconnu la nécessité, en vue des collisions qui menacent d'éclater entre des Puissances maritimes étrangères, que ceux de nos fidèles sujets, qui exercent le commerce et la navigation, observent rigoureusement les obligations et précautions requises pour assurer au pavillon Suédois tous les droits et priviléges qui lui reviennent en qualité de pavillon neutre, et pour éviter également tout ce qui pourrait en quelque manière le rendre suspect aux Puissances belligérantes et l'exposer à des insultes ; Nous avons jugé à propos, en rapportant ce qui a été statué précédemment à cet égard, d'ordonner que les règles suivantes devront dorénavant être généralement observées :

§ 1. Pour être admis à jouir des droits et priviléges revenant au pavillon Suédois en sa qualité de neutre, tout bâtiment Suédois devra être muni des documens qui, d'après les Ordonnances existantes*) sont requis pour constater sa nationalité, et ces documens devront toujours se trouver à bord du bâtiment, pendant ses voyages.

§ 2. Il est sévèrement défendu aux Capitaines d'avoir des papiers de bord et des connoissemens doubles ou faux, ainsi que de hisser pavillon étranger, en quelle occasion ou sous quel prétexte que ce soit.

§ 3. S'il arrivait que, pendant le séjour d'un bâtiment Suédois à l'étranger, l'équipage, soit par désertion, mort, maladie ou autres causes, ce trouvât diminué au point de n'être plus suffisant pour la manœuvre du navire, et qu'ainsi des matelôts étrangers devront être engagés, ils devront être choisis du préférence parmi les sujets de Puissances neutres ; mais dans aucun cas le nombre des sujets des Puissances belligérantes, qui se trouveront à bord du navire, ne devra excéder un tiers du total de l'équipage. Tout

* Les Ordonnances Royales du 1 Mars 1841 et du 15 Août 1851.

ıngement de cette nature dans le personnel du vire, avec les causes qui y ont donné lieu, devra e marqué par le Capitaine sur le rôle de l'équipage, la fidélité de cette annotation devra êtra certifiée r le Consul ou Vice-Consul Suédois compétent, ou n, en cas qu'il ne s'en trouvât point sur les lieux, r la Municipalité, le Notaire public ou quelqu'autre rsonne de la même autorité, suivant les usages des ys respectifs.

§ 4. Les bâtimens Suédois, en qualité de neutres, urront naviguer librement vers les ports et sur les tes des nations en guerre; toutefois les Capitaines vront s'abstenir de toute tentative d'entrer dans un rt bloqué, dès qu'ils ont été formellement prévenus l'état de ce port par l'officier qui commande le ocus.

Par un port bloqué, on entend celui qui est telle- ent fermé par un ou plusieurs vaisseaux de guerre nemis stationnés et suffisamment proches, qu'on ne isse y entrer sans danger évident.

§ 5. Toutes marchandises, même propriété des sujets s Puissances belligérantes, pourront être librement enés à bord des bâtimens Suédois, en leur qualité neutres, à la reserve des articles de contrebande guerre. Par contrebande de guerre il faut en- ndre les articles suivans: canons mortiers, armes toute espèce, bombes, grenades, boulets, pierres à u, mêches, poudre, salpêtre, souffre, cuirasses, ques, ceinturons, gibernes, selles et brides, ainsi e toutes fabrications pouvant servir directement à sage de la guerre,—en exceptant toutefois la quan- é de ces objêts qui peut être nécessaire pour la fense du navire et de l'équipage.

Pour le cas qu'à l'égard de la définition des objets contrebande de guerre, des changemens ou addi- ns devraient être introduits par suite de conventions ec les Puissances étrangères, il en sera ultérieure- ent statué.

§ 6. Il est interdit à tout Capitaine Suédois de se sser employer, avec le bâtiment qu'il conduit, à nsporter, pour aucune des Puissances belligérantes, s dépêches, des troupes, ou des munitions de guerre, ns y être contraint par une force réelle; auquel il devra protester formellement contre un tel ploi de la force.

§ 7. Les bâtimens des Puissances belligérantes urront importer dans les ports Suédois et en ex- rter toutes denrées et marchandises, pourvu que, après le tarif général des douanes, elles soient per- ises à l'importation ou à l'exportation, et à la serve des articles réputés contrebande de guerre.

§ 8. Il est défendu à tout sujet Suédois d'armer ou équiper des navires pour être employés en course contre quelqu'une des Puissances belligérantes, leurs sujets et propriétés; ou de prendre part à l'équipement de navires ayant une pareille destination. Il lui est également défendu de prendre service à bord de corsaires étrangers.

§ 9. Il ne sera permis à aucun corsaire étranger d'entrer dans un port Suédois et de séjourner sur nos rades. Des prises ne pourront non plus être introduites dans les ports Suédois, autrement que dans le cas de détresse constatée. Il est également interdità nos sujets d'acheter des corsaires étrangers des effets capturés, du quelle espèce que ce soit.

§ 10. Lorsqu'un Capitaine, faisant voile sans escorte, est rencontré en pleine mer par quelque vaisseau de guerre de l'une des Puissances belligérantes, ayant droit de contrôler ses papiers de bord, il ne doit ni se refuser, ni chercher à se soustraire à cette visite; mais il est tenu à produire ses papiers loyalement et sans détour, ainsi qu'à surveiller que ni depuis que son navire ait été hélé, ni pendant la visite, aucun des documens concernant le navire ou son chargement ne soit soustrait ou jeté à la mer.

§ 11. Lorsque les bâtimens marchands font voile sous escorte de vaisseaux de guerre, les Capitaines devront se régler sur ce qui est prescrit par l'ordonnance Royale du 10 Juin 1852.

§ 12. Le Capitaine qui observe scrupuleusement tout ce qui lui est prescrit ci-dessus, doit jouir, d'après les traités et le droit des gens, d'une navigation libre et sans gêne; et si, non obstant, il est molesté, il a droit de s'attendre à l'appui le plus énergique de la part de Nos Ministres et Consuls à l'étranger, dans toutes les justes réclamations qu'il pourra faire pour obtenir réparation et dédommagement; au lieu que la Capitaine qui omet et néglige d'observer ce qui vient de lui être prescrit pour sa route, ne devra s'en prendre qu'a lui-même des désagrémens qui pourront résulter d'une pareille négligence, sans avoir à espérer Notre appui et protection.

§ 13. Dans le cas qu'un navire Suédois fut saisi, le Capitaine doit remettre au Consul ou Vice-Consul Suédois, s'il s'en trouve dans le port où son bâtiment est amené, mais, à son défaut, au Consul ou Vice-Consul Suédois le plus voisin, un rapport fidèle et dûment certifié des circonstances de cette prise avec tous ses détails.

Mandons et ordonnons à tous ceux à qu'il appartiendra de se conformer exactement à ce que dessus. En foi de quoi Nous avons signé la présente de Notre main et y avons fait apposer Notre sceau Royal. Donné au Château de Stockholm le 8 Avril 1854.

(L.S.) OSCAR.

J. F. Fåhræus.

UNITED STATES.

y Lord, Washington, February 18, 1867.

I have the honour to acknowledge the receipt your Lordship's telegram of the 14th instant, quiring what laws, regulations, or other means the nited States Government possess for the prevention acts within their territories of which belligerents ight complain as violating duties of neutrality.

The only law on the subject is the Neutrality Act 1818. In the accompanying volume of Brightley's igest I have marked the law. In the foot-notes your ordship will find the principal cases which have en decided in the courts of the United States bear- g upon the construction of the statutes.*

When a complaint is addressed to the Government of a vessel being fitted out in breach of the law, the

* Note.—The references here mentioned are the following:—
(*a*) At end of sect. 1. "See 2 McLean 2; 5 *Ibid.* 250."
(*b*) Sect. 2, after words "If any person." "Foreign consuls are not exempted from the penal effect of the statute. A minister who violates its provisions is liable to be summarily dismissed. 7 Opinions, 367." [N.B. The opinion ere referred to is that of Caleb Cushing, which has been circu- ted among the Commissioners.]
(*c*) In 2nd sect. after the second "himself." "This Act is declaratory of the pre-existing law of nations, and was intended to aid the executive in the enforcement of that law. The 'Santissima Trinidada.' 1 Brock. 7 Opinions, 367."
(*d*) In sect. 2, after word "Enlisted." "It is not a crime under "this Act to leave this country with intent to enlist in foreign "military service; nor to transport persons out of the country "with their own consent who have an intention of so enlisting. "To constitute a crime under this statute such persons must be "hired or retained to go abroad with the intent of such en- "listing. United States *v.* Karinski. 8 Law reports, 254. See "4 Opinions, 336."
(*e*) In sect. 3, after the first "arm." "Either will constitute "the offence; it is not necessary that the vessel should be "armed, or in a condition to commit hostilities on leaving the "United States. United States *v.* Quincy, 6 Pet. 445. See "3 Opin. 738, 741."
(*f*) In sect. 3, after the word "armed." "See United States "*v.* Guinet, 2 Dall, 328."
(*g*) In sect. 3, after words "with intent." "Any degree of "intent to commit hostilities against a nation with which this "Government is at peace is sufficient. 5 Opin. 92. But there "must be a fixed intention that the vessel should be so employed; "a mere wish so to employ her, if he could obtain funds on her "arrival at a foreign port for the purpose of arming her, is not "sufficient to render the defendant guilty. United States *v.* "Quincy, 6 Pet. 445; Moodie *v.* 'The Alfred,' 3 Dall. 307. "But the fact that the arms and ammunition were cleared out "as cargo, and the men shipped as for a common mercantile

matter is referred for investigation to the District Court Attorney (an officer of the Federal Government) in the state in which the vessel is situated. It is his duty to see that the law is respected, and it is incumbent upon him to receive and collect evidence, and to libel the ship, if in his opinion the circumstances of suspicion are sufficient to warrant the institution of legal proceedings against her. He then reports the case to the Government, who decide either in proceeding with the libel or on releasing the vessel. In the latter event it is in the power of the Government to call upon the owners to give bonds in double the value of the vessel not to employ her for illegal purposes. This course is pursued where the evidence shows grounds for suspicion, but when the grounds are not strong enough to warrant a prosecution, with a view to forfeiture. Mr. Bemis' in a pamphlet on the Neutrality Laws, states that the bonds only affect the owners so long as the vessel remains in their possession, and he seems to be of opinion that in the event of a *bonâ fide* sale, and of her subsequent employment as a cruiser or privateer against a friendly power, it would not be found possible to enforce the penalty against the original owners.

I enclose a newspaper extract with reference to the proceedings against a steamer called the "R. R. Cuyler," which will show the manner in which the Government acts. In this case the Attorney-General directs that the libel be dismissed, and the vessel restored to the owners on their executing a bond as required by statute.

Though there are no specific regulations in force as to the mode in which the law is to be carried out, I apprehend it may be inferred that this Government would consider any circumstances of suspicion attending the fitting out or equipment of a ship as sufficient to warrant her detention until the case can be investigated by the district attorney. It is not necessary that the allegations should be of such gravity as, if proved, would warrant her forfeiture. The owners may be compelled by law to give a bond previous to the sailing of an armed vessel, to guard against the possibility of her being employed against a friendly power, should war exist between two countries at peace with the United States. And a similar bond can be exacted under certain contingencies mentioned in the statute from the owners of any vessel built for warlike purposes and laden with war materials.

It is to be presumed that these provisions are intended to apply to cases of war-ships fitted out during time of war, where no direct evidence appears of illegal intent, but where the Government thinks it advisable to call upon the owners to find security for keeping the peace. In order to effect this object it is evident that a wide discretion must be left to the Government for the exercise of the power of detention.

I may remark that the Government of the United States has considerable advantages in proceeding against vessels under the statute. They have on the spot where the preparations are being made the district attorney, a legal officer responsible to the Government, to whom the duty of investigation is committed. The libel is in the nature of a proceeding in Admiralty "in rem." It is decided by a judge conversant with International and Maritime Law, and without the intervention of a jury. The failure of the attempt to stop or punish the persons engaged in the expeditions against Cuba, and the suspension of proceedings against the men who took part in the Fenian raids against the British Provinces, in spite of the clearest evidence, shows the difficulty of enforcing the law, when it has to be put in operation "in personam," and when it is dependent on the verdict of a jury.

I have, &c.,

FREDERICK W. A. BRUCE.

The Lord Stanley, M.P.

&c. &c. &c.

THE STEAMER R. R. CUYLER.—Conspiracy on Board to assume Control of the Vessel at Sea—The Owners not culpable—The Vessel to be bonded.

New York, February 15.

The suspicion that the steamship "R. R. Cuyler" was intended for a piratical enterprise appears, from facts which have come to light since the seizure by the Government, to have been well founded. The theory advanced, which there is no grounds for doubting, is, that there was a conspiracy on board to assume control of the vessel after she had gone to sea, and thus deprive the lawful owners of their property, who were not to receive their pay for her until she was delivered at Laguayra, Venezuela, to the Colombian Government. Whatever may have been intended by the extraordinary personages on board, and however they may have intended to execute their plans, are matters no longer to be regarded with alarm, as the party has been dispersed, and the owners required to file bonds in twice the value of the vessel that she shall not be used by them to commit hostilities against any nation with which this Government is at peace. This is sufficiently set forth in the following letter, received by Collector Smythe from the Secretary of the Treasury yesterday :

ORDER TO THE COLLECTOR.

SIR, Treasury Department, February 1867.

I TRANSMIT herewith a copy of the letter of this date from the Attorney-General of the United States at New York to the United States District Attorney at New York relative to the steamship "R. R. Cuyler." You are hereby instructed to carry out the decision of the President, to release the "R. R. Cuyler" to the owners, upon being advised in writing by the United States District Attorney that the required bond has been given and the proceedings in court dismissed.

Very respectfully,

H. MCCULLOCH,

Secretary of the Treasury.

H. A. Smythe, Collector of Customs,

New York.

The following is a copy of the letter of the Attorney-General :

THE ATTORNEY-GENERAL'S LETTER.

Attorney-General's Office, Feb. 13, 1867.

In re steamship "R. R. Cuyler."

Samuel G. Courtney, Esq., United States Attorney,

New York City.

SIR,

THE President has had under his consideration the case of the steamship "R. R. Cuyler," now detained at the port of New York under a seizure made by the customs officers, and a libel filed by you on or about the 5th of the current month, for alleged infraction of our neutrality laws.

The decision of the President had thereon is that such circumstances are shown as to require bond and security to be given by the owners, Messrs. Sturges, Taylor, Hubbell, and Dollard, according to the provisions of the 10th and 11th sections of the Act of April 20, 1818, entitled, "An Act in addition to the "Act for the Punishment of certain Crimes against "the United States, and to repeal the Acts therein "named."—3rd vol. Statutes at Large, p. 447.

You are accordingly instructed that, upon the entering and delivery to you of such bond to the United States, with sufficient sureties, prior to the

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" voyage, will not vary the case. The Gran Para, 7 Wheat. " 486."

(*h*) In sect. 3, after word "people." "United States *v.* Quincy, " 6 Pet. 467."

(*i*) In sec. 5, after first "vessel." ' As to what amounts to " the augmentation of the force of a foreign armed vessel within " our ports, see United States *v.* Grassin, 3 W. C. C. 65 ; the " scooner 'Nancy,' Bee. 73 ; Moodie *v.* The Ship 'Brothers,' " *Ibid.* 76; Moodie *v.* The 'Betty Cathcart,' *Ibid.* 292; United " States *v.* Guinet, 2 Dall. 328 ; 2 Opin. 86."

(*k*) In sect. 6, after first "United States." "It is unimportant " that such association originated beyond seas, if the expedition " was carried on from hence. Ex parte Needham ; Pet. C.C. " 487."

(*l*) In sect. 6, after words "means for." "See 5 McLean, 250, " 306 ; 2 Wheat. Cr. Cas. xlviii., 3 *Ibid.* 174."

ring of the vessel, in double the amount or the
e of the vessel and cargo on board, including her
ament, conditioned that the vessel shall not be
loyed by such owners to cruise or commit hos-
es against the subjects, citizens, or property of
foreign prince or State, or of any colony, district,
ple with whom the United States are at peace,
rovided by the said 10th section, you will dismiss
proceedings so instituted.

structions will be sent to the collector of the port
he Secretary of the Treasury for the release of
vessel to her owners, when you advise them that
ond has been given and the proceedings in court
been dismissed.

I am very respectfully, &c.,

HENRY STANBERY,
Attorney-General.

E OF THE "R. R. CUYLER."—Alleged Conspiracy
an ex-rebel Captain and Crew to turn the vessel
to a Chilian Privateer—Bonds required by the
overnment.

(From the "New York Post.")

he steamship "R. R. Cuyler" seized some time
by the customs authorities of this port, and held
xamination on a charge that she was destined for
legal voyage, is still in the hands of the officers,
the former owners and claimants of the vessel are
ident she will soon be released. The theory that
e was a conspiracy on board to take her from the
ers, who were not, it is declared, to get their pay
her, or all of it, till she should be delivered at
asyra, Venezuela, to the Colombian Government,
w, it appears, fully accepted, and it goes into the
as part of the matter which the Attorney-General
consider when he decides whether the "R. R.
ler" ought to be held to await the action of the
ts with a view to her condemnation if the charges
ld be sustained.

his theory is founded on information already
ially given to the public. The evidence that the
el was to become a Chilian privateer, or have
e other illegal character, is considered complete ;
her owners do not hesitate to admit that they
ld probably have lost her, except for the inter-
nce of the United States authorities. This avowal raises many interesting points about the fitting out of the "Cuyler," which will be fully investigated if an examination is entered upon, but which otherwise may never be brought out.

What is now recognized as the important fact of the case is that the conspiracy was fully matured, and was to be executed by ex-rebels, who comprised the passengers of the vessel. It appears that the getting together of these men and the equipment of them, with the purchase of some war material, costing more than 100,000*g*, were the parts of the business about which the owners had no direct knowledge, and Read, the rebel officer who had charge of the numerous "passengers," only a part of whom it seems were on board the "Cuyler" at the wharf when she was ready to sail at the time of the seizure, was at the head of the piratical expedition. Exactly what was to be done with the "Cuyler" after she had left this port, and was in the hands of the desperadoes who had been gathered to take possession of her, the representatives of the men whose interests were involved do not undertake to say.

These things in some respects explain and in other respects complicate and mystify the affair of the "Cuyler." What influence they may have on the determination of the matter is a curious question. That the vessel, if she had been allowed to go, would have made a legal voyage, nobody asserts; not is it likely that the Government officers will urge that the American owners were guilty of complicity with the rebels, or with the persons, whoever they may have been, who furnished the means required at the beginning of the suspicious undertaking.

In a later edition the "Post" says:—

"Collector Smythe has to-day received a letter from the Secretary of the Treasury directing that the steamship "R. R. Cuyler" be released when the owners of her give bonds to the Government in double the amount of her value that she shall not be used by them to commit hostilities against any nation with which this Government is at peace."

If bonds are not given, and no new instructions come from Washington, proceedings for the confiscation of the vessel will go on. No intimation has yet been given as to what the course of the claimants will be.

HE following declarations and notifications were issued by the several countries hereunder specified, on the breaking out of the Civil War in America.

FRANCE.

DECLARATION respecting NEUTRALITY of FRANCE during STRUGGLE in AMERICA.

Paris, le 10 *Juin* 1861.

E Ministre des Affaires Etrangères a soumis à
pereur la déclaration suivante, que Sa Majesté a
tue de son approbation :—

Déclaration.

a Majesté l'Empereur des Français, prenant en
l'état du paix qui existe entre la France
Etats Unis d'Amérique, a résolu de maintenir
cte neutralité dans la lutte engagée entre le
vernement de l'Union et les Etats qui prétendent
er une Confédération particulière.

En conséquence, Sa Majeste, vu l'Article 14 de
rdonnance de la Marine du mois d'Août 1861,
rticle 3 de la Loi du Avril 1825, les Articles 84 et
du Code Pénal, 65 et suivants du Décret du
Mars 1852, 313 et suivants du Code Pénal Mari-
e, et l'Article 21 de Code Napoléon,

. Il ne sera permis à aucun navire de guerre ou
ou l'autre des belligérants d'entrer et
avec des prises dans nos ports ou rades
de vingt-quatre heures, hors le cas de

2. Aucune vente d'objets provenant de prises ne pourra avoir lieu dans nos dits ports ou rades.

3. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la course maritime, ou de concourir d'une manière quelconque à l'équipement on l'armement d'une navire de guerre ou corsaire de l'une des deux parties.

4. Il est également interdit à tout Français, résidant en France ou à l'etranger, de s'enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'un ou de l'autre des belligérents.

5. Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.

Les contrevenants aux défenses et recommandations contenues dans la présente Déclaration seront poursuivis, s'il y a lieu, conformément aux dispositions de la Loi du 10 Avril 1825, et aux Articles 84 et 85 du

Code Pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire aux dits contrevenants des dispositions de l'Article 21 du Code Napoléon, et des Articles 65 et suivants du Décret du 24 Mars 1852, sur la marine marchande, 313 et suivants du Code Pénal pour l'armée de mer.

Sa Majesté déclare, en outre, que tout Français qui ne se sera pas conformé aux présentes prescriptions pourra prétendre à aucune protection de son Gouvernement contre les actes ou mesures, quels qu'ils soient que les belligérents pourraient excercer on décréter.

(Signé) NAPOLEON.

Le Ministre des Affaires Etrangères,
(Signé) E. Thouvenel.

PRUSSIA.

THE Minister of Commerce issued the notification annexed to the mercantile classes in the Baltic ports :

" It is my duty to make known to you that during the continuance of the conflict that has broken out among the North American States, the mercantile classes must abstain from all enterprises which are forbidden by the general principles of international law, and especially by the Ordinance of the 12th of June 1856, which has relation to the Declaration of the 12th of April 1856, upon the principles of maritime law. Moreover, I will not omit to ma especially noticeable by you that the Royal Gove ment will not permit to its shipping or its subje which may mix up in these conflicts by taking let of marque, sharing in privateering enterprises, car ing merchandise contraband of war, or forwardi despatches, to have the benefit of its protection agai any losses which may befall them through su transactions.

" The equipment of privateers in the ports of t country is forbidden by the laws of the land, as known to the mercantile community."

BELGIUM.

(Translation.)

BELGIUM has given its adhesion to the principles laid down in the Declaration of the Congress of Paris of April 16, 1856. This adhesion was published, together with the said Declaration (6th June 1856) in the Belgian " Moniteur " of June 8, 1856.

The commercial public is notified that instructions on this subject have been given to the judicial, maritime, and military authorities, warning them that privateers, under whatever flag or commission, or letters of marque, are not to be allowed to enter our ports except in case of imminent perils of the sea. The aforesaid authorities are charged, consequent to keep a strict watch upon all such privateers a their prizes, and to compel them to put to sea ag as soon as practicable.

The same authorities have been charged not recognize the validity of any commission or letter marque whatsoever.

All persons subject to the laws of Belgium, w shall fit out or take any part in any privateeri expedition, will therefore expose themselves to t danger, on the one hand, of being treated as pira abroad, and, on the other, to prosecution bef Belgian tribunals with all the rigour of the laws.

RUSSIA.

To the Commander-in-chief of the Port of Cronstadt.

His Imperial Highness the General Admiral, foreseeing the possibility of ships belonging to the Southern States of the American Union, which have seceded from the United States of North America, arriving at our ports during the present navigation, has directed me to inform your Excellency, for your guidance, that, according to the opinion of the Minister of Foreign Affairs, the flag of men-of-war belonging to the seceded States must not be saluted.

That there may be no obstacle in the way of commerce, merchant-vessels of the seceded States are to be treated according to the rules acted on by us with regard to Italian merchant-vessels sailing under the Italian flag, *i.e.*, according to the Treaties that are at present in force (Commercial Treaty concluded between America and us, December $\frac{6}{18}$, 1832).

Should the crews of vessels belonging to the seceded States not wish to acknowledge the authority of the Consuls appointed by the Federal Government of Washington, then in case of dispute they must abide by the decision of our local authorities, in the same manner as foreigners whose Governments have Representatives in our Empire.

(Signed) General-Major GREIG.

Director of the Chancellery of the Minister of Mari

Circular addressed to the Custom-Houses on the White, Baltic, Black, and Azoff Seas.

By order of the Minister of Finance, the Depa ment of Foreign Trade prescribes :—In case a merchant-vessels arrive in our ports belonging to t Southern States of the American Union, the same acknowledging the authority of the Government of t United States of America, the said vessels are to treated and received as hitherto, according to t Treaty of 1832, should even their ships' papers not in order, which may occur in consequence of t present political condition of the United State America.

(Signed) General-Lieutenant PASHKOFF,
Director of the Department of Foreign Trade
SORNIN, *Chief of Section, &c.*

NETHERLANDS.

(Translation.) *At the Hague.*

IN obedience to the King's orders the Ministers for Foreign Affairs, of Justice, and of the Marine, present to the knowledge of all it may concern, that to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag soever, or provided with any commission or letters of marque, or their pri shall be admitted into our havens or seaports, unl in case of marine disaster, and that requisite orders issued that under any circumstances such private and their prizes be required to go again to sea speedily as possible.

The Ministers above named.

slation.) *The Hague,*

E Minister for Foreign Affairs and the Minister stice, by the King's authority, warn, by these nts, all inhabitants of the kingdom, that during xisting disturbances in the United States of ica they in nowise take part in privateering, se the Netherlands Government has acceded to eclaration upon maritime rights set forth by the Conference of 1856, whereby, among other rs, privateering is abolished, and no recognition mmissions got for letters of marque permitted. hat commissions and letters of marque, in con- ith the aforesaid prohibition, which may issue habitants of the Netherlands, cannot have a effect in behalf of the King's subjects, or of broad who are in subjection to the laws of the dom. Those who, under such circumstances, e in or lend their aid in privateering to other e, will be considered as pirates, and prosecuted ling to law in the Netherlands, and subjected to unishment provided for the commission of such es.

e Ministers above named.

(Translation.) *The Hague, June* 1861.

THE Minister for Foreign Affairs, apprised by a communication from the Minister of Marine that the King had authorized the naval force in the West Indies to be seasonably strengthened by His Majesty's steam-frigate "Zealand," and the screw-propellers "Dyambi" and "Vesuvius," for the purpose of giving protection to the trade and navigation of the Netherlands during the contest which seems to be in existence in the United States of North America, wherever it may be desired, therefore esteems it to be his duty to direct the attention of shipmasters, consignees, and freighters, to the peril to which their insurance against loss will be exposed by any violation of the obligations imposed on neutral Powers to respect actual blockades, and not to carry contraband of war, or despatches of belligerents.

In these cases they will be subject to all the resulting losses that may follow, without the benefit of any protection or intervention on the part of His Majesty's Government. Of which take notice.

The Minister above named.

PORTUGAL.

slation.)

Palace of Necessidades, July 29, 1861.

being proper, in view of the circumstances at nt existing in regard to the United States of ica, to carry into effect the principles established Declaration of Parish of April 16, 1856, made e representatives of the powers that signed the y of Peace of the 30th of March of that year, to declaration my Government acceded, and like- for the same reason, to adopt other measures I deem opportune, I have been pleased after g the Council of State, to decree as follows:

icle 1. In all the ports and waters of this King- as well on the continent and in the adjacent as in the ultramarine provinces, Portuguese and foreigners are prohibited from fitting out s destined for privateering.

ticle 2. In the same ports and waters referred to preceding article is, in like matter, prohibited the entrance of privateers and of the prizes made by privateers, or by armed vessels.

The cases of overruling necessity (*força maior*), in which, according to the law of nations, hospitality is indispensable, are excepted from this regulation, without permission, however, being allowed, in any manner, for the sale of any objects proceeding from prizes.

The Ministers and Secretaries of State in all the departments will thus understand, and cause it to be executed.

(Signed) KING.

(Countersigned)

MARQUEZ DE LOULE.
ALBERTO ANTONIO DE MORAES CARVALHO.
VISCONDE DE SA DA BANDEIRA.
CARLOS BENTO DA SILVA,
THIAGO AUGUSTO VELLOSO DE HORTA.
ANTONIO JOSE D'AVILA.

HAWAIIAN ISLANDS.

LAMATION of the King of the Hawaiian Islands declaring the neutrality of the Hawaiian Islands n the war between the United States and the -called Confederate States.

Kailua, August 26, 1861.

it known to all whom it may concern that we, meha IV., King of the Hawaiian Islands, officially notified that hostilities are now pending between the Government of the States and certain States thereof, styling them- the Confederate States of America," hereby our neutrality between the said contending

neutrality is to be respected to the full jurisdiction, and that all captures and within the same are unlawful, and in rights as a Sovereign.

rther known that we hereby strictly subjects, and all who reside or may be jurisdiction, from engaging either directly privateering against the shipping or either of the contending parties, or of y aid to such enterprises whatever; and all persons so offending will be liable to the penalties imposed by the laws of nations, as well as by the laws of said States, and they will in no wise obtain any protection from us as against any penal consequences which they may incur.

Be it further known that no adjudication of prizes will be entertained within our jurisdiction, nor will the sale of goods or other property belonging to prizes be allowed.

Be it further known that the rights of asylum are not extended to the privateers or their prizes of either of the contending parties, excepting only in cases of distress or of compulsory delay by stress of weather or dangers of the sea, or in such cases as may be regulated by treaty stipulation.

Given at our marine residence of Kialua, this 26th day of August, A.D. 1861, and the seventh of our reign.

By the King,
(Signed) KAMEHAMEHA.
By the King and Kuhina Nui,
KAAHUMANU.
R. C. WYLLIE.

BREMEN.

Ordinance of Senate against Privateering.

(Translation.)

(Published July 4, 1861.)

THE Senate finds it necessary, in regard to the events which have occurred in North America, to renew the regulations contained in its Ordinance of April 29, 1854, and accordingly makes the following notification for general observance :—

1. All subjects of the State of Bremen are forbidden, under severe penalties, both from meddling in any way with privateering and from taking part therein, either by fitting out privateers themselves, or con buting through others to the same.

2. The proper officers are ordered not on any count to allow the fitting out or provisioning privateers, under whatever flag or carrying whate letters of marque, in any port of the Bremen territo nor to admit into a Bremen port any such privatee or the prizes made by them, except in cases of prov stress of weather at sea.

Resolved at Bremen, in the Assembly of the Sena on the 2nd, and published on the 4th of July 1861.

HAMBURGH.

Ordinance against Privateering.

(Translation.)

On the occasion of the events which have taken place in the United States of North America, the Senate reminds the public that, according to the notification of July 7, 1856, relative to the Declaration of the Congress of Paris on the application of maritime law in time of war, privateering is entirely abolished, and therefore it is prohibited to engage in any way in privateering, or to take part in it either in fitting privateers or by assisting others to do so. The pro orders have also been issued not to allow in Hamb ports the fitting out or provisioning of privatee under whatever flag or furnished with whatever lett of marque, and not to admit into Hamburg port roadsteads any such privateers, with or without priz except in cases of proved stress of weather at sea.

Given in the Assembly of the Senate, Hambu July 19, 1861.

APPENDIX No. V.

BRITISH PROCLAMATIONS OF NEUTRALITY.

I.—SPAIN AND SPANISH AMERICA.

A PROCLAMATION prohibiting His Majesty's natural-born Subjects from serving, or enlisting, or entering themselves to serve in the military forces or ships of war, raised or set forth by the persons exercising or assuming to exercise the Powers of Government in certain Provinces, and Parts of Provinces in Spanish America, or in the Military Forces of His Catholic Majesty employed in Spanish America, or in His said Majesty's Ships of War, 27th November 1817.

GEORGE, P.R.

WHEREAS, there unhappily subsists a state of warfare between His Catholic Majesty, and divers provinces, or parts of provinces in Spanish America: And whereas it has been represented to us that many of our subjects have, without our leave or licence, enlisted or entered themselves to serve in the military forces, or ships of war raised or set forth by the persons exercising, or assuming to exercise the Powers of Government in such provinces or parts of provinces, and that divers others of our subjects are about, in like manner, to enter and enlist themselves; and whereas such practices are highly prejudicial to, and tend to the peace and welfare of our Crown and Dominions; we do therefore hereby, by and with the advice of our Privy Council, strictly charge and command all and every of our natural-born subjects, of what degree or quality soever, not to serve in any such military forces or ships of war as aforesaid, and not to enlist or enter themselves to serve therein, and not to go beyond the seas, or embark in order to serve, or with intent to enter or enlist themselves to serve in s military forces or ships of war; and it is, at the s time our royal will and pleasure, and we do by and w the advice aforesaid, hereby also strictly charge command all and every of our said subjects not to s or enlist, or enter themselves to serve, in any of military forces or ships of war raised or set forth to be raised or set forth by His Catholic Majesty, not to go beyond the seas, or embark, in order o the intent to serve, or enter, or enlist themselve serve in any such military forces or ships or war is, nevertheless, our royal will and pleasure, nothing herein contained shall be deemed or take prohibit any of our subjects who are engaged at time of the date of this our proclamation, in ser in the military forces of His Catholic Majesty, our leave or licence from continuing to serve the provided that such our said subjects do not s with the military forces of His Catholic Maje when employed in Spanish America; and we hereby, by and with the advice aforesaid, strictly quire all our said subjects duly to conform to commands herein contained, under pain of our hig displeasure, and the utmost forfeitures, penalties, punishments, to which by law they will otherwis liable.

Given at our Court at Brighton, the 27th da November 1817, in the 58th year of His Maje reign.

GOD SAVE THE KING.

II.

ISH PROCLAMATION for putting in execution the law made to prevent the enlisting or engagement of His Majesty's subjects in Foreign Service, and the fitting out or equipping in His Majesty's dominions vessels for warlike purposes without His Majesty's licence, 6th June 1823.

ORGE R.

WHEREAS hostilities at this time exist between rent states and countries in Europe and America, it His Majesty's determination to observe the test neutrality with respect to the states and ntries engaged in such hostilities: And whereas Majesty has been informed that attempts have n made to induce His Majesty's subjects to engage such hostilities, by entering into the military and al service of some of the states and countries hout His Majesty's leave or licence.

And whereas by an Act, made and passed in the h year of the reign of His late Majesty of blessed mory, intituled "An Act to prevent the enlisting r engagement of His Majesty's subjects to serve n foreign service, and the fitting out or equipping, n His Majesty's dominions, vessels for warlike urposes without His Majesty's licence."

t is, amongst other things, enacted "that if any ural-born subject of His Majesty," &c. (Second se of the Foreign Enlistment Act).

And it is further enacted "that it shall and may e lawful for any Justice of the Peace * * * * cording to law for the said offence." (First paraph of the third clause of the Foreign Enlistment Act.)

And it is further enacted "that in case any ship or vessel," &c. (Fifth clause of the Foreign Enlistment Act.)

And it is further enacted "that if any master or person," &c. (Sixth clause of the Foreign Enlistment Act.)

And it is further enacted "that if any person within any part of the United Kingdom," &c. (Seventh clause of the Foreign Enlistment Act.)

And it is further enacted "that if any person in any part of the United Kingdom, &c. (Eighth clause of the Foreign Enlistment Act.)

His Majesty, therefore, being resolved to cause the provisions of the said statute to be effectually put in execution, and being desirous that none of His Majesty's subjects should unwarily subject themselves to the penalties thereby inflicted, hath thought fit, by and with the advice of His Privy Council, to issue this His Royal Proclamation, and doth hereby strictly command that no person or persons whatsoever do presume to commit or attempt any act, matter, or thing whatsoever, contrary to the provisions of the said statute, and the tone, intent, and meaning thereof, and that the said provisions of the said statute be punctually observed and kept, upon pain of the several penalties by the said statute inflicted upon offenders against the same, and of His Majesty's high displeasure.

Given at our Court at Carleton House this 6th day of June 1823 and in the fourth year of Our reign.

GOD SAVE THE KING.

III.—GREECE AND TURKEY.

(30 September 1825.)

ORGE R.

WHEREAS, His Majesty being at peace with all the wers and States of Europe and America, has retedly declared His royal determination to maintain trict and impartial neutrality in the different cons, in which certain of these powers and states are gaged.

And whereas the commission of acts of hostility individual subjects of His Majesty against any wer or State, or against the persons and properties he subjects of any Power or State, which being at ce with His Majesty is at the same time engaged a contest, with respect to which His Majesty has lared His determination to be neutral, is calculated ring into question the sincerity of His Majesty's laration:

And whereas if His Majesty's subjects cannot be ctually restrained from such unwarranted commisn of acts of hostility, it may be justly apprehended t the Governments aggrieved thereby might be able, on their part, to restrain their subjects from mmitting acts of violence upon the persons and perty of unoffending subjects of His Majesty:

And whereas the Ottoman Porte, a Power at peace h His Majesty, is and has been for some years past gaged in a contest with the Greeks, in which con- t His Majesty has observed a strict and impartial utrality:

And whereas great numbers of His Majesty's loyal bjects reside and carry on a beneficial commerce, d possess establishments, and enjoy privileges with- the dominions of the Ottoman Porte, protected by the th of treaties between His Majesty and that Power:

And whereas His Majesty has received recent and doubted information that attempts are now making induce certain of His Majesty's subjects to fit out ips of war and privateers in the ports of His ajesty's Kingdom, and to embark therein, for the rpose of carrying on, under the Greek flag, hostile erations against the Ottoman Government, of cap- ing and destroying Turkish ships and property, committing depredations on the coasts of the minions:

And whereas such hostile operations would be directly contrary to the provisions of the Act passed in the 59th year of the reign of His late Majesty (cap. 63.) intituled "An Act to prevent the enlisting, "or engagement of His Majesty's subjects to serve in "foreign service, and the fitting-out or equipping, in "His Majesty's dominions, vessels for warlike pur- "poses without His Majesty's licence," in which it is amongst other things enacted, "That if any natural- "born subject, &c.," (2nd clause of the Foreign Enlistment Act):

And it is further enacted, "That if any person, "&c." (7th clause of the Foreign Enlistment Act).

His Majesty, therefore, being desirous of preserving to His subjects the blessings of peace which they now happily enjoy, and being resolved to persevere in that system of neutrality which His Majesty has so repeatedly declared his determination to maintain; in order that none of His Majesty's subjects may unwarily render themselves liable to the penalties imposed by the Statute herein mentioned, has thought fit, by and with the advice of His Privy Council, to issue this His Royal Proclamation.

And His Majesty does hereby strictly command that no person or persons whatsoever do presume to take part in any of the said contests, or to commit or attempt any act, matter, or thing whatsoever, contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of His Majesty's high displeasure.

And His Majesty, by and with the advice aforesaid, doth hereby enjoin all His Majesty's subjects strictly to observe, as well towards the Ottoman Porte and the Greeks, as towards all other belligerents with whom His Majesty is at peace, the duties of neutrality, and to respect in all and each of them the exercise of those belligerent rights which His Majesty has always claimed to exercise when His Majesty has himself been unhappily engaged in war.

Given at our Court at Windsor, the 30th day of September 1825, and in the 6th year of our reign.

GOD SAVE THE KING.

IV.—AUSTRIA, FRANCE, AND SARDINIA.

(May 13, 1859).

By the Queen.—A Proclamation.

Victoria R.

Whereas we are happily at peace with all Sovereigns, Powers, and States:

And whereas, notwithstanding our utmost exertions to preserve peace between all the Sovereign Powers and States now at war, hostilities have unhappily commenced between His Imperial Majesty the Emperor of Austria on the one part and His Majesty the King of Sardinia and His Imperial Majesty the Emperor of the French on the other part:

And whereas a state of war now exists between His Imperial Majesty the Emperor of Austria on the one part and His Majesty the King of Sardinia and His Imperial Majesty the Emperor of the French on the other part, and between their respective subjects and others inhabiting within their countries, territories, or dominions:

And whereas we are on terms of friendship and amicable intercourse with all and each of these Sovereigns, and with their several subjects, and others, inhabiting within their countries, territories, or dominions:

And whereas great numbers of our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges, within the dominions of each of the aforesaid Sovereigns, protected by the faith of Treaties between us and each of the aforesaid Sovereigns:

And whereas we, being desirous of preserving to our subjects the blessings of peace, which they now happily enjoy, are firmly purposed and determined to abstain altogether from taking any part, directly or indirectly, in the war now unhappily existing between the said Sovereigns, their subjects and territories, and to remain at peace with and to maintain a peaceful and friendly intercourse with all and with each of them, and their respective subjects, and others inhabiting within any of their countries, territories, and dominions, and to maintain a strict and impartial neutrality in the said hostilities and war unhappily existing between them:

We therefore have thought fit, by and with the advice of our Privy Council, to issue this our Royal Proclamation.

And we do hereby strictly charge and command all our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid hostilities and war, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas in and by a certain statute made and passed in the 59th year of His Majesty King George III. [cap. 69], entitled "An Act to prevent the enlisting "or engagement of His Majesty's subjects to serve in "a foreign service, and the fitting out or equipping, "in His Majesty's dominions, vessels for warlike "purposes without His Majesty's licence," it is amongst other things declared and enacted as follows: "That if any person within any part of the United "Kingdom," &c., (7th clause of the Foreign Enlistment Act).

And it is in and by the said Act further enacted "That if any person in any part of the United King-"dom," &c. (8th clause of the Foreign Enlistment Act).

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to our protection, to observe towards each and all of the aforesaid Sovereigns, their subjects and territories, and towards all belligerents whatsoever with whom we are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of those belligerent rights which we and our royal predecessors have always claimed to exercise.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our Royal Proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral Sovereign, in a war between other Sovereigns, or in violation or contravention of the law of nations in that behalf, as more especially by breaking, or endeavouring to break, any blockade lawfully and actually established by or on behalf of any or either of the said Sovereigns, by carrying officers, soldiers, despatches, arms, ammunition, military stores or materials, or any article or articles considered, and deemed to be, contraband of war, according to the law or modern usages of nations, for the use or service of any or either of the said Sovereigns, that all persons so offending, together with their ships and goods, will rightfully incur, and be justly liable to, hostile capture and to the penalties denounced by the law of nations in that behalf.

And we do hereby give notice, that all our subjects and persons entitled to our protection who may misconduct themselves in the premises, will do so at their peril, and of their own wrong; and that they will in no wise obtain any protection from us against such capture, or such penalties as aforesaid, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our Court at Buckingham Palace this 13th day of May in the year of our Lord 1859, and in the 22d year of our reign.

God save the Queen.

V.—UNITED STATES.

May 13, 1861.

By the Queen.—A Proclamation.

Victoria R.

Whereas we are happily at peace with all Sovereigns, Powers, and States:

And whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America:

And whereas we, being at peace with the Government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties:

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation:

And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril:

And whereas in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the III., intituled "An Act to prevent the

listing or engagement of His Majesty's subjects serve in a foreign service, and the fitting out or uipping, in His Majesty's dominions, vessels for arlike purposes, without His Majesty's licence," amongst other things declared and enacted as ws:—

That if any natural-born subject of His Majesty, 2nd Clause of the Foreign Enlistment Act)."

nd it is in and by the said Act further enacted,— That if any person within any part of the United gdom, &c., (7th Clause of the Foreign Enlistment

nd it is in and by the said Act further enacted,— That if any person in any part of the United gdom, &c., (8th Clause of the Foreign Enlistment ."

ow, in order that none of our subjects may arily render themselves liable to the penalties osed by the said statute, we do hereby strictly mand, that no person or persons whatsoever do mit any Act, matter, or thing whatsoever, con- to the provisions of the said statute, upon pain he several penalties by the said statute imposed, of our high displeasure.

nd we do hereby further warn all our loving sub- , and all persons whatsoever entitled to our ection, that if any of them shall presume, in empt of this our royal proclamation, and of our displeasure, to do any acts in derogation of their , as subjects of a neutral sovereign in the said est, or in violation or contravention of the law of ons in that behalf; as for example, and more cially, by entering into the military service of er of the said contending parties as commissioned non-commissioned officers or soldiers; or by ing as officers, sailors, or marines on board any ship or vessel of war or transport of or in the service of either of the said contending parties; or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said contending parties; or by breaking or endeavouring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced.

And we do hereby declare, that all our subjects, and persons entitled to our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our Court at the White Lodge, Richmond Park, this Thirteenth day of May, in the year of our Lord, One thousand eight hundred and sixty-one, and in the Twenty-fourth year of our reign.

God Save the Queen.

VI.—SPAIN AND CHILI.

(6th February 1866.)

By the Queen—A Proclamation.

TORIA.

WHEREAS we are happily at peace with all sove- , powers, and states:

nd whereas hostilities have unhappily commenced veen the Government of Spain and the Govern- t of the Republic of Chili:

nd whereas we, being at peace with both the said ernments, have declared our royal determination maintain a strict and impartial neutrality in the est between the said contending parties:

We therefore have thought fit, by and with the ce of our Privy Council, to issue this our Royal clamation:

nd we do hereby strictly charge and command all loving subjects to observe a strict neutrality in during the aforesaid hostilities, and to abstain violating or contravening either the laws and tes of the realm in this behalf, or the law of s relation thereto, as they will answer to the y at their peril.

nd whereas, in and by a certain statute made and the fifty-ninth year of His Majesty King III., intituled "An Act to prevent the engagement of His Majesty's subjects to a foreign service, and the fitting out or in His Majesty's dominions, vessels for s, without His Majesty's licence," it amongst other things, declared and enacted as ows:

That if any natural-born subject of His Majesty, (2nd Clause of the Foreign Enlistment Act)."

And it is in and by the said Act further enacted:

That if any person within any part of the United gdom," &c., (7th Clause of the Foreign Enlistment

And it is in and by the said Act further enacted:

"That if any person in any part of the United "Kingdom," &c., (8th Clause of the Foreign Enlistment Act).

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said Statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever, contrary to the provisions of the said Statute, upon pain of the several penalties by the said Statute imposed, and of our high displeasure.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our Royal Proclamation, and of our high displeasure, to do any acts in derogation of their duty, as subjects of a neutral Sovereign, in the said contest, or in violation or contravention of the law of nations in that behalf, as for example and more especially by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war or transport, of or in the service of either of the said contending parties, or by serving as officers, sailors, or marines on board any privateers bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas, with intent to enlist or engage in any such service; or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport, by either of the said contending parties; or by breaking, or endeavouring to break, any blockade lawfully and actually established

by or on behalf of either of the said contending parties; or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usuage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said Statute, or by the law of nations in that behalf imposed or denounced.

And we do hereby declare that all our subjects, and persons entitled to our protection, who may misco duct themselves in the premises, will do so at th peril, and of their own wrong, and that they will no wise obtain any protection from us against a abilities or penal consequences, but will, on the c trary, incur our high displeasure by such misconduc

Given at our Court at Osborne House, Isle Wight, this third day of February in the year of o Lord one thousand eight hundred and sixty-six, a in the twenty-ninth year of our reign.

GOD SAVE THE QUEEN.

VII.—SPAIN AND PERU.

13th March 1866.

The same as the preceding (Spain and Chili) *mutatis mutandis*.

VIII.—AUSTRIA, PRUSSIA, ITALY, GERMANY.

BY THE QUEEN.—A PROCLAMATION.

VICTORIA R.

WHEREAS we are happily at peace with all sovereigns, powers, and states:

And whereas, notwithstanding our utmost exertions to preserve peace between all the sovereign powers and states now at war, hostilities have unhappily commenced between His Imperial Majesty the Emperor of Austria, His Majesty the King of Prussia, His Majesty the King of Italy, and the Germanic Confederation:

And whereas a state of war now exists between His Imperial Majesty the Emperor of Austria, His Majesty the King of Prussia, His Majesty the King of Italy, and the Germanic Confederation, and between their respective subjects and others inhabiting within their countries, territories, or dominions:

And whereas we are on terms of friendship and amicable intercourse with all and each of these sovereigns, and with the Germanic Confederation, and with their several subjects and others inhabiting within their countries, territories, or dominions:

And whereas great numbers of our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges, within the dominions of each of the aforesaid sovereigns and states, protected by the faith of treaties between us and each of the aforesaid sovereigns and states:

And whereas we, being desirous of preserving to our subjects the blessings of peace, which they now happily enjoy, are firmly purposed and determined to abstain altogether from taking any part, directly or indirectly, in the war now unhapily existing between the said sovereigns and states, their subjects and territories, and to remain at peace with and to maintain a peaceful and friendly intercourse with all and with each of them, and their respective subjects and others inhabiting within any of their countries, territories, and dominions, and to maintain a strict and impartial neutrality in the said hostilities and war unhappily existing between them:

We therefore have thought fit, by and with the advice of our Privy Council, to issue this our Royal Proclamation:

And we do hereby strictly charge and command all our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid hostilities and war, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril:

And whereas, in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the Third, entitled "An Act to prevent the "enlisting or engagement of His Majesty's subjects to "serve in a foreign service, and the fitting out or "equipping in His Majesty's dominions, vessels for "warlike purposes, without His Majesty's licence," is amongst other things declared and enacted as follow —"That if any person within any part of the Unit "Kingdom, &c.," (7th clause of the Foreign Enli ment Act.)

And it is in and by the said Act further enacte "That if any person in any part of the United Kin dom, &c.," (8th clause of the Foreign Enlistment Ac

Now, in order that none of our subjects may unwari render themselves liable to the penalties imposed the said statute, we do hereby strictly command th no person or persons whatsoever do commit any a matter, or thing whatsoever contrary to the provisio of the said statute, upon pain of the several penalti by the said statute imposed, and of our high displeasur

And we do hereby further warn and admonish our loving subjects, and all persons whatsoever entitl to our protection, to observe towards each and all the aforesaid sovereigns and states, their subjects a territories, and towards all belligerents whatsoev with whom we are at peace, the duties of neutralit and to respect, in all and each of them, the exercise those belligerent rights which we and our Royal p decessors have always claimed to exercise:

And we do hereby further warn all our loving su jects, and all persons whatsoever entitled to our prot tion, that if any of them shall presume, in contempt this our Royal Proclamation and of our high displeasu to do any Acts in derogation of their duty as subje of a neutral sovereign in a war between other so reigns and states, or in violation or contravention the law of nations in that behalf, as more especially breaking or endeavouring to break any blockade la fully and actually established by or on behalf of any either of the said sovereigns and states, by carryi officers, soldiers, despatches, arms, ammunition, milita stores or materials, or any article or articles consider and deemed to be contraband of war, according to law or modern usages of nations, for the use or serv of any or either of the said sovereigns and states, t all persons so offending, together with their ships goods, will rightfully incur and be justly liable hostile capture, and to the penalties denounced by law of nations in that behalf:

And we do hereby give notice, that all our subje and persons entitled to our protection who may m conduct themselves in the premises will do so at th peril and of their own wrong; and that they will nowise obtain any protection from us against s capture or such penalties as aforesaid, but will, on contrary, incur our high displeasure by such misconduc

Given at our court at Windsor, this twenty-seve day of June in the year of our Lord one thousand ei hundred and sixty-six, and in the thirtieth year of reign.

GOD SAVE THE QUEEN.

Appendix No. VI.

ULATIONS AND INSTRUCTIONS PUBLISHED BY HER MAJESTY'S GOVERNMENT DURING THE CIVIL WAR IN THE UNITED STATES, 1861–65.

TER from the Foreign Office to the Admiralty, Colonial, War, and India Offices, interdicting ARMED CRUIZERS and PRIVATEERS, whether of the United States of North America, or the so-styled Confederate States, from carrying PRIZES into BRITISH PORTS ; 1 June 1861.

LORDS, Foreign Office, 1 June 1861.

HER Majesty's Government are, as you are re, desirous of observing the strictest neutrality ie contest which appears to be imminent between United States and the so-styled Confederate es of North America ; and with the view more tually to carry out this principle they propose to dict the armed ships, and also the privateers of parties, from carrying prizes made by them into ports, harbours, roadsteads, or waters of the ed Kingdom, or of any of Her Majesty's colonies ossessions abroad.

have accordingly to acquaint your Lordships that Queen has been pleased to direct, that orders in ormity with the principles above stated should with be addressed to all proper authorities in the ed Kingdom and to Her Majesty's naval or other orities in all quarters beyond the United Kingdom, heir guidance in the circumstances.

I have, &c.

Lords Commissioners (Signed) J. RUSSELL.
f the Admiralty.

OTE.—A similar letter was addressed on the same to each of the Secretaries of State for India, War, the Colonies.

—Extract from the "London Gazette" of the 15th December 1863.

TER from EARL RUSSELL to the LORDS COMMISSIONERS of the ADMIRALTY, and DESPATCH from the DUKE OF NEWCASTLE to the GOVERNOR of the BAHAMAS :

LORDS, Foreign Office, January 31, 1862.

HER MAJESTY being fully determined to ob- e the duties of neutrality during the existing ilities between the United States and the States ng themselves "the Confederate States of Ame- " and being, moreover, resolved to prevent, r as possible, the use of Her Majesty's harbours, s, and coasts, and the waters within Her Majesty's itorial jurisdiction, in aid of the warlike pur- s of either belligerent, has commanded me to municate to your Lordships, for your guidance, following rules, which are to be treated and rced as Her Majesty's Orders and Directions.

Her Majesty is pleased further to command that e rules shall be put in force in the United King- and in the Channel Islands on and after Thurs- the 6th day of February next, and in Her esty's territories and possessions beyond the seas, days after the day when the Governor or other authority of each of such territories or possessions ively shall have notified and published the e, stating in such notification that the said rules to be obeyed by all persons within the same itories and possessions.

1. During the continuance of the present hostilities ween the Government of the United States of rth America and the States calling themselves he Confederate States of America," or until Her jesty shall otherwise order, no ship of war, or ivateer belonging to either of the belligerents, shall permitted to enter or remain in the port of Nassau, in any other port, roadstead, or waters of the except by special leave of the Lieu- of the Bahama Islands, or in case of stress of weather. If any such vessel should enter any such port, roadstead, or waters, by special leave, or under stress of weather, the authorities of the place shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necesary for her immediate use.

If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those Islands, the Lieutenant-Governor shall give notice to such vessel to depart, and shall require her to put to sea, within such time as he shall, under the circumstances, consider proper and reasonable. If there shall then be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in or near the same port, roadstead, or waters, the Lieutenant-Governor shall fix the order of time in which such vessels shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant ship), which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

II. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," all ships of war and privateers of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose or for the purpose of obtaining any facilities of warlike equipment ; and no ship of war or privateer of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters, subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship), shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

III. If any ship of war or privateer of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom and in the Channel Islands, and in the several colonies and foreign possessions and dependencies of Her Majesty, respectively enter any port, roadstead, or waters belonging to Her Majesty either in the United Kingdom or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew or repairs ; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies, beyond what may be necessary for her immediate use ; and no such vessel, which may have been allowed to remain within British waters for the purpose of repair, shall continue in any such port, roadstead, or waters, for a longer period

than twenty-four hours after her necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant ships,) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant ship), of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent; and the times, hereby limited, for the departure of such ships of war and privateers respectively, shall always, in case of necessity, be extended, so far as may be requisite for giving effect to this proviso, but not further or otherwise.

IV. No ship of war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer, in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

I have &c.,
(Signed) RUSSELL.

Note.—A similar letter has been addressed to the Secretaries of State for the Home, Colonial, War, and India Departments, and to the Lords Commissioners of Her Majesty's Treasury.

Downing Street,
SIR, October 6, 1863.

DOUBTS having been expressed as to whether under the regulations of the 31st January 1862, which were embodied in a proclamation issued by you on the 11th March following, it is required that the Commander of a belligerent ship of war or privateer should obtain the permission of the local authorities before entering the ports, roadsteads, or waters of the Bahamas out-islands, when the Governor is not there present, I am to acquaint you that Earl Russell has taken Her Majesty's pleasure thereupon, and you are to understand that at the ports of the out-islands, as at Nassau, the special leave of the Governor himself is required (unless in stress of weather), by any belligerent vessel desiring to enter, with this exception only, that in cases of grave emergency and real necessity and distress, such as a sailing vessel being dismasted, or accident happening to the machinery of a steam-vessel, the vessel may enter the ports, roadsteads, or waters on obtaining leave from a resident officer, to whom the Governor shall have delegated his authority in that behalf.

With a view to give effect to Her Majesty's intentions, you will be pleased to convey to the officers in the out-islands to whom it may best be confided, the authority in question, taking care to communicate to them copies of the regulations of the 31st January 1862, and calling their especial attention to the limits of the authority delegated, and to that clause of the regulations of 31st January 1862 in which it is directed that vessels entering under stress of weather, or by special leave, shall be required to put to sea as soon as possible.

I have, &c.,
(Signed) NEWCASTLE.

Governor Bayley, C.B.,
&c., &c., &c.

RETURN to an ADDRESS of the Honourable the House of COMMONS, dated 3 June 1864, for "Copy of any Additional INSTRUCTIONS to COLONIAL GOVERNORS on the subject of BELLIGERENT CRUISERS."

Colonial Office,
6 June 1864. FREDERICK ROGERS.

CIRCULAR INSTRUCTIONS to Governors of Colonies respecting the Treatment of Prizes Captured by Federal or Confederate Cruizers if brought into British Waters.

SIR, Downing-street, 2d June 1864.

I THINK it well to communicate to you the decisions at which Her Majesty's Government have arrived on certain questions which have arisen respecting the treatment of prizes captured by Federal or Confederate cruizers if brought into British waters.

1. If any prize captured by a ship of war of either of the belligerent powers shall be brought by the captors within Her Majesty's jurisdiction, notice shall be given by the Governor to the captors immediately to depart and remove such prize.

2. A vessel which shall have been actually and *bonâ fide* converted into, and used as a public vessel of war, shall not be deemed to be a prize within the meaning of these rules.

3. If any prize shall be brought within Her Majesty's jurisdiction through mere stress of weather or other extreme and unavoidable necessity, the Governor may allow for her removal such time as he may consider to be necessary.

4. If any prize shall not be removed at the time prescribed to the captors by the Governor, the Governor may detain such prize until Her Majesty's pleasure shall be made known.

5. If any prize shall have been captured by a violation of the territory or territorial waters of Her Majesty, the Governor may detain such prize until Her Majesty's pleasure shall be made known.

Her Majesty's Government have not thought it necessary to make any addition to the instructions already given with respect to cargoes, viz., that Her Majesty's orders apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

These rules are for the guidance of the Executive authority, and are not intended to interfere in any way with the process of any court of justice.

I have, &c.,
(Signed) EDWARD CARDWELL.

"London Gazette," September 9, 1864.

Foreign Office, September 8, 1864.

It is hereby notified that Her Majesty has been pleased to order that for the future no ship of war belonging to either of the belligerent powers of North America shall be allowed to enter, or to remain, be, in any of Her Majesty's Ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the Commissioners of Her Majesty's Customs, and to the Governors of Her Majesty's Colonies and foreign possessions, to see that this order is properly carried into effect.

Extract from the "London Gazette" of May 1[illegible] 1865.

LETTER from Earl RUSSELL to the LORDS COMMISSIONERS of the ADMIRALTY:—

Foreign Office,
My LORDS, May 11, 1865.

I HAVE the honour to acquaint you that, [illegible] existing state of the civil war in America, and [illegible] uncertainty which may be felt as to its continuance

ears to Her Majesty's Government that the time arrived for ceasing to enforce so much of the ers which, in pursuance of my letter of the 31st of uary 1862, were issued by the several depart- its of Her Majesty's Government, as empowered authorities of any port belonging to Her Majesty, er in the United Kingdom or the Channel Islands, n any of Her Majesty's Colonies or foreign posses- is or dependencies, to require any ship of war or rateer of either belligerent which might enter any t, roadstead, or waters belonging to Her Majesty, rder to obtain provisions or things necessary for subsistence of her crew, or to effect repairs, to put ea as soon as possible after the expiration of a iod of twenty-four hours, without permitting her ake in supplies beyond what might be necessary her immediate use; and not to suffer any such sel as might have been allowed to remain within ish waters for the purpose of repair to continue any port, roadstead, or waters belonging to Her jesty for a longer period than twenty-four hours r her necessary repairs should have been com- ted; and also so much of the same orders as ited the quantity of coal and the period within ich it might be obtained, to be embarked on board such ship of war or privateer of either belligerent. have addressed a similar letter to the Secretaries State for the Home, Colonial, War, and India partments and to the Lords Commissioners of Her jesty's Treasury.

(Signed) RUSSELL.

Note.—A similar letter has been addressed to the retaries of State for the Home, Colonial, War, and dia Departments, and to the Lords Commissioners Her Majesty's Treasury.

---

tract from the "London Gazette" of June 6, 1865.

TTER from EARL RUSSELL to the LORDS COMMISSIONERS of the ADMIRALTY.

LORDS, Foreign Office, June 2, 1865.

I HAVE the honour to state to your Lordships since the date of my letter of the 11th ultimo elligence has reached this country that the late Pre- ent of the so-called Confederate States has been tured by the military forces of the United States, has been transported as a prisoner to Fort Mon- , and that the armies hitherto kept in the field by Confederate States have for the most part sur- ered or dispersed.

In this posture of affairs Her Majesty's Government of opinion that neutral nations cannot but con- er the civil war in North America as at an end.

In conformity with this opinion Her Majesty's vernment recognize that peace has been restored thin the whole territory of which the United States North America before the commencement of the il war were in undisturbed possession.

As a necessary consequence of such recognition on the part of Her Majesty's Government, Her Majesty's several authorities in all ports, harbours, and waters belonging to Her Majesty, whether in the United Kingdom or beyond the seas, must henceforth refuse permission to any vessel of war carrying a Confederate flag to enter any such ports, harbours, and waters; and must require any Confederate vessels of war which, at the time when these orders reach Her Majesty's authorities in such ports, harbours, and waters may have already entered therein on the faith of Proclamations heretofore issued by Her Majesty, and which, having complied with the provisions of such Proclamations, may be actually within such ports, harbours, and waters, forthwith to depart from them.

But Her Majesty's Government consider that a due regard for national good faith and honour requires that Her Majesty's authorities should be instructed, as regards any such Confederate vessels so departing, that they should have the benefit of the prohibition heretofore enforced against pursuit of them within twenty-four hours by a cruizer of the United States lying at the time within any such ports, harbours, and waters, and that such prohibition should be then and for the last time maintained in their favour.

If, however, the Commander of any Confederate vessel of war which may be found in any port, harbour, or waters of Her Majesty's dominions at the time these new orders are received by Her Majesty's authorities, or may enter such port, harbour, or waters, within a month after these new orders are received, should wish to divest his vessel of her warlike character, and, after disarming her, to remain without a Confederate flag within British waters, Her Majesty's authorities may allow the Commander of such vessel to do so at his own risk in all respects, in which case he should be distinctly apprised that he is to expect no further protection from Her Majesty's Government, except such as he may be entitled to in the ordinary course of the administration of the law in time of peace.

The rule as to twenty-four hours would of course not be applicable to the case of such vessel.

I have addressed a similar letter to the Secretaries of State for the Home, Colonial, India, and War Offices, and also to the Lords Commissioners of Her Majesty's Treasury, requesting them, as I do your Lordships, to issue instructions in conformity with the decision of Her Majesty's Government to the several British authorities at home or abroad who may be called upon to act in the matter.

I am, &c.

(Signed) RUSSELL.

Note.—A similar letter was addressed to the Secretaries of State for the Home, Colonial, War, and India Departments, and to the Lords Commissioners of Her Majesty's Treasury.

APPENDIX No. VII.

[illegible] to an Address of the Honourable the House of Commons, dated July 8, 1863; for "Copy of a Memorial from certain Shipowners of Liverpool to the Secretary of State for Foreign Affairs, suggesting [illegible] Alteration in the Foreign Enlistment Act."

No. 1.

Memorial.

[illegible] the Right Honourable the Earl Russell, Her [illegible]jesty's Principal Secretary of State for the [illegible]n Department.

[illegible] Memorial of the undersigned shipowners of Liverpool,

[illegible] memorialists who are deeply interested [illegible]ng, view with dismay the probable [illegible] of a state of affairs which permits [illegible]t to construct in and send to sea from British ports vessels of war, in contravention of the provisions of the existing law.

That the immediate effect of placing at the disposal of that foreign belligerent a very small number of steam-cruizers has been to paralyze the mercantile marine of a powerful maritime and naval nation, inflicting within a few months losses, direct and indirect, on its shipowning and mercantile interests which years of peace may prove inadequate to retrieve.

That your memorialists cannot shut their eyes to the probability that in any future war between England and a foreign Power, however insignificant in naval strength, the example now set by subjects of

Her Majesty while England is neutral may be followed by citizens of other countries, neutral when England is belligerent; and that the attitude of helplessness in which Her Majesty's Government have declared their inability to detect and punish breaches of the law notoriously committed by certain of Her Majesty's subjects, may hereafter be successfully imitated by the Governments of those other countries in answer to English remonstrances.

That the experience of late events has proved to the conviction of your memorialists that the possession by a belligerent of swift steam-cruizers, under no necessity, actual or conventional, to visit the possibly blockaded home ports of that belligerent, but able to obtain all requisite supplies from neutrals, will become a weapon of offence against which no preponderance of naval strength can effectually guard, and the severity of which will be felt in the ratio of the shipping and mercantile wealth of the nation against whose mercantile marine the efforts of those steam-cruizers may be directed.

That the effect of future war with any Power thus enabled to purchase, prepare, and refit vessels of war in neutral ports will inevitably be to transfer to neutral flags that portion of the sea-carrying trade of the world which is now enjoyed by your memorialists and by other British shipowners.

That over and above the chances of pecuniary loss to themselves your memorialists share in the regret with which a law-regarding community must naturally look on successful attempts to evade the provisions of an Act of Parliament passed for a single and simple purpose, but which has been found not to give the Executive all the powers needed for its effective execution.

That your memorialists would accordingly respectfully urge upon your lordship the expediency of proposing to Parliament to sanction the introduction of such amendments into the Foreign Enlistment Act as may have the effect of giving greater power to the Executive to prevent the construction in British ports of ships destined for the use of belligerents.

And your memorialists would further suggest to your lordship the importance of endeavouring to secure the assent of the Governments of the United States of America and of other foreign countries to the adoption of similar regulations in those countri also.

All which your memorialists respectfully submit.

(Signed)

Lamport & Holt.	James Brown & Co.
James Baines & Co.	James Poole & Co.
Richard Nicholson & Son.	W. Jacob & Co.
W. B. Boadle.	Henry Moore & Co.
J. Prowse & Co.	Imrie & Tomlinson.
Currie, Newton, & Co.	Thomas Chilton.
Nelson, Alexander, & Co.	Jones, Palmer, & Co.
Kendall Brown.	Farnworth & Jardine.
G. S. H. Fletcher & Co.	Thomas & James Harriso
J. Aikin.	L. H. Macintyre.
Finlay, Campbell, & Co.	Potter, Brothers.
Cropper, Ferguson, & Co.	Chas. Geo. Cowie & Co.
J. Campbell.	W. J. Seally.
S. R. Graves.	R. Girvin & Co.
Rankin, Gilmour, & Co.	C. T. Bowring & Co.
Rathbone, Bros. & Co.	

Liverpool, June 9, 1863.

No. 2.

Mr. Hammond to Messrs. Lamport & Holt, and others.

GENTLEMEN, Foreign Office, July 6, 1863.

I AM directed by Earl Russell to acknowled the receipt of the memorial dated the 9th of Jun signed by you and others of the merchants at Live pool, in which you urge upon his Lordship the exp diency of proposing to Parliament such amendmen to the Foreign Enlistment Act as shall enable t Government to prevent the construction in Briti ports of ships destined for the use of belligerents.

I am to state to you in reply, that in Lord Russel opinion the Foreign Enlistment Act is effectual for reasonable purposes, and to the full extent to whi international law or comity can require, provid proof can be obtained of any act done with the inte to violate it.

Even if the provisions of the Act were extend it would still be necessary that such proof should obtained, because no law could or should be passed punish upon suspicion instead of upon proof.

I am, &c.

(Signed) E. HAMMOND.

LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

REPORT

OF THE

Commissioners Appointed to Inquire

INTO

THE LAWS OF PAWNBROKING

IN IRELAND.

DUBLIN:

ALEXANDER THOM & CO., 87, ABBEY-STREET,

AND 104, ST. STEPHEN'S-GREEN.

1868.

REPORT

OF THE

OMMISSIONER APPOINTED TO INQUIRE

INTO

IE LAWS OF PAWNBROKING IN IRELAND.

MALL

esented to both Houses of Parliament by Command of Her Majesty.

DUBLIN:

TED BY ALEXANDER THOM, 87 & 88, ABBEY-STREET,

FOR HER MAJESTY'S STATIONERY OFFICE.

1868.

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COPY OF COMMISSION.

THE LORD LIEUTENANT-GENERAL AND GENERAL GOVERNOR OF IRELAND.

EHOUSE.

ese are to authorize you by all lawful and proper ways and ns to inquire into—

t. The differences in the laws respecting the trade of pawn- ing in Ireland and in England and Scotland, respectively.

d. The differences as to amount of fees and taxes imposed the trade of pawnbroking in Dublin and in the other parts e United Kingdom.

d. The manner in which the duty of selling forfeited pledges scharged in the city of Dublin by the officers intrusted with same, and the amount of fees or remuneration received in ct of such sales, by whom received, and how applied.

h. The nature and extent of the duties of the Marshal of the of Dublin, with respect to the trade of pawnbroking in nd, the amount of fees or remuneration received in respect ch duties, by whom received, and how applied.

h. The effect of the differences in the laws as to pawnbroking, e taxes and fees imposed, and in the system of selling for- l pledges upon the rate of interest, ticket money, and other es to persons pawning in the city of Dublin as compared other parts of the United Kingdom, and for all and any of urposes aforesaid, you shall call for and examine all such s documents, papers, and records as you shall judge likely ord you the fullest information on the subject of this com- on, and shall require returns and statements from, and on and examine in such form and manner as you shall fit all such persons as you shall judge competent in that f and by whom you may be the better informed in respect

of the matters aforesaid, and what you shall have done in premises, together with your opinion touching and concer the several matters hereby referred to for your consideration, shall fully report to us in writing.

Given at Her Majesty's Castle of Dublin, the 27th d of February, 1866.

By His Excellency's command,

C. P. FORTESCU

Warrant appointing William Neilson Hancock, LL.D., Commissioner to inquire into the Trade of Pawnbroking in Ireland.

OF PAWNBROKING INQUIRY COMMISSION.

REPORT.

EXCELLENCY JAMES, MARQUESS OF ABERCORN, K.G.
LORD LIEUTENANT-GENERAL AND GENERAL GOVERNOR OF IRELAND.

PLEASE YOUR EXCELLENCY,

The late Lord Lieutenant was pleased to issue
ission authorizing and appointing me to inquire

he differences in the laws respecting the trade of
king in Ireland and in England and Scotland,
ely.

The differences as to amount of fees and taxes
upon the trade of pawnbroking in Dublin and
her parts of the United Kingdom.

he manner in which the duty of selling forfeited
s discharged in the city of Dublin by the officers
with the same, and the amount of fees or remune-
ceived in respect of such sales, by whom received,
applied.

he nature and extent of the duties of the Marshal
y of Dublin, with respect to the trade of pawn-
in Ireland, the amount of fees or remuneration
in respect of such duties, by whom received, and
lied.

he effect of the differences in the laws as to pawn-
in the taxes and fees imposed, and in the system
forfeited pledges upon the rate of interest, ticket
nd other charges to persons pawning in the city of
compared with other parts of the United Kingdom.

I was also directed to report my proceedings u
Commission, together with my opinion touching
cerning the several matters referred to my consid

Having examined and considered the severa
thus referred to me, I have now the honour to re
opinions thereon.

1. *History of the Laws of Pawnbroking in Ire*

Stat. 26 Geo. III. c. 43 ; & 28 Geo. III. c. 49.

The laws which regulate the trade of pawnbr
Ireland are almost entirely contained in two st
the Irish Parliament passed before the Union, in
1786 and 1788. These statutes were the first at
the Irish Legislature to regulate the trade of pawn
and their operation was not made the subject of
nor did the provisions therein contained subs
undergo any material revision by the Irish Parlia

Append. to First Report on Municipal Corporations, Ireland, 1835, pp. 36, 37, 38.

After these statutes had been in force for fo
their operation came under the consideration of t
missioners, who, in 1835, inquired into Municipal
tions in Ireland, and also of the Commissioners wi
the same time, inquired into the state of the poo
land. In 1838 a Select Committee of the H
Commons was appointed to inquire into the "
"regulations which affect the trade of pawnbr
"Ireland, and their practical operation."

Append. (C), Part I. of Par. Inquiry, Ireland, pp. 19, 20, 26, 79, 80.

The Committee of the House of Commons af
inquiry showed in their report that the statutes h
to attain the objects sought by those who fram
and directed attention to the abuses which had g
under the system thereby established.

In Great Britain the attempt to regulate by le
the trade of pawnbroking commenced much earlie
Ireland, and a number of temporary statutes wer
and from time to time renewed with some modi
and, ultimately, twelve years after the Irish s
1788, the statute which has since to a large exte
lated the trade in Great Britain, was passed. It
contain the provisions which in the Irish statu

y condemned by the Committee of the House of
ns in 1838.

1838 the hours for carrying on the business of
oking have been changed in Great Britain, but
Ireland.

50 the provisions in force in Great Britain against 23 Vic.
g for tickets in cases of loans under ten shillings c. 21.
pealed, and a charge of a halfpenny for such tickets
ctioned. The charge of a penny for tickets, in
the like amount, which had always prevailed in
was not affected by this legislation.

ral Principles on which the Legislation with respect to
broking rests, and the changes which have taken place
blic policy with respect to such principles.

e considering the legislation in detail, with a view
ver what revision (if any) is possible, it is necessary
to some very great changes which have taken place
c policy since 1788, with respect to the principles
d in the laws of pawnbroking.

e changes relate to the usury laws, exclusive trade
es, protection of trade, and monopolies produced
tion.

t of the Changes in Public Policy as to the Usury Laws
he Principles involved in the Laws of Pawnbroking.

e 1786 the usury laws made it difficult and in most
practicable to carry on the trade of pawnbroking
ll loans in Ireland in a lawful manner; because by
Geo. II., c. 7 (Irish), it was unlawful to charge
an six per cent. per annum for the loan of money,
r small the loan or however great the trouble
ted with it; and this rate would not, except in rare
remunerate persons for lending money in such small
s are for the most part lent by pawnbrokers. The Evidence
loan, according to a return made by Mr. Francis Appendix A, p. 62.
is in Dublin three shillings and six pence.

The necessity for the interference of the legisla
that time in order to establish the trade of pawnb
arose simply from the odium against the natural
pawnbroking which the usury laws and the public
against usury had then produced, and which d
respectable persons from embarking in the trade.

Stat. 26 Geo. III. (Ir.), c. 43. The Act of 1786 was in effect a relaxation of th
laws. It made it legal for pawnbrokers, upon com
with certain conditions to charge from twenty-five t
per cent. per annum. That this was the real scop
Act is shown by section 17, which provides that
in the Act "should extend or be construed to ex
any person who should lend money at the rate of
cent. per annum only." So that the trade of an
broker who did not require the relaxation of th
laws was left perfectly free.

At the present day the policy of the Legislatu
regard to regulating the rate of interest on large ar
sums is reversed. So far back as 1854, by Statute
18 Vic., c. 90, the several Acts and parts of Acts
to usury then in force in Great Britain and Irela
Section 4. all existing laws against usury, were repealed, w
single exception of contracts under the laws rel
pawnbroking.

The abolition of the usury laws was the result of
of temporary and tentative statutes,* and this wise
in our jurisprudence has realized all the beneficia
of free trade in loans which were anticipated from

Whilst the usury laws were in full force it was
necessary to encourage charitable loan funds, bu

* Commencing in 1833 with 3 and 4 Wm. IV., c. 98,
favour of Bills of Exchange not having more than three mont
By a temporary Statute, 2 and 3 Vic., c. 37, this exemption
siderably extended. The temporary exemption was continue
by 3 and 4 Vic., c. 83, in 1841 by Stat. 4 and 5 Vic., c. 54, an
by Stat. 6 and 7 Vic., c. 45, in 1845 by Stat. 8 and 9 Vic., c
in 1850 by Stat. 13 and 14 Vic., c. 56, and before the period
tion appointed by this statute had expired all the usury la
as regards pawnbroking) were repealed.

plete repeal of the usury laws the number of these ions in Ireland decreased from 115 in 1854 to 97 , and the amount of money lent by these societies, vas £870,024 in 1854, and which had increased to 17 in 1859, had fallen to £615,786 in 1865.

Committee of the House of Commons in 1838 made nquiry shortly after the modification of the usury ommenced, but before the first general statute on bject (Statute 2 & 3 Vic., c. 37) had been enacted, teen years before the general repeal of the usury tatute 17 & 18 Vic., c. 90.)

grounds which they stated for entering upon the ration of an amended scale of interest, viz.:— public opinion required some legal limit to be fixed nbrokers' interest," have, from the change in public on the subject of the usury laws to which I have d, no longer the same weight.

statements of the Committee as to the inconve- which they observed as resulting from the attempt a maximum of interest are very important. They

Committee cannot but perceive with regret that the enactment imum scale of pawnbrokers' interest by law has a strong ten- establish a fixed minimum.

. . . . "One class of borrowers may be conceived to ying a large rate of interest on their loan, and pledging a small f property, while others may be supposed willing to part for a h a considerable amount of security, in order to obtain the lation they desire at a lower rate of charge (p. xvii.)

er these circumstances it may be regretted that the Legislature e required to determine *à priori* what maximum of charge sufficient to cover their fluctuating risks, and many arguments adduced to throw a doubt upon the abstract policy of inter- law to regulate the precise scale (p. xviii.)"

Committee in their report contrast three scales of oking remuneration—viz., the Irish scale, the English nd the scale adopted by the Mont de Piete, then in ce at Limerick.

English scale was lower than the Irish, and that of nt de Piete in the case of loans of one shilling was

below the English, but for other loans was so
higher and sometimes lower, and for the most pa
similar to the English scale.

The Committee received a great deal of evide
regard to the Mont de Piete at Limerick, and recom
a scale of remuneration for pawnbrokers differing i
from the English scale and from that of the Mont d
but which was on an average to about the sam
below that fixed by the Irish Parliament.

The Committee appear to have been influe
recommending the scale by the supposed succes
Mont de Piete system in Ireland; but their recor
tion has, by the subsequent abandonment of these
tions, been deprived of the main argument on
rested.

It appears from the circumstance of the failur
Monts de Piete, how impossible it is to determin
hand what scale of remuneration will be succes
must be left in this, as in all other cases, to be r
by the action of free competition.

Complaints are made that the Irish rate of in
too high; and the existence of a lower scale of in
England seems to afford ground for these compla

I think it is impolitic that the Legislature sho
with the system of lending to the poor on a princip
ent from that adopted in dealing with loans to
or that the statutable rate of interest in Irelan
be different from that established in England.

The attempt to regulate the rate of interest on
Great Britain has entirely failed. The regular paw
refuse to receive pledges on which, in their opinion
does not allow a sufficient rate of interest; and the
that this class of business is done by unlicensed hous
"Dolly-shops" in England and "Wee-pawns" in S

Attempts have been made to bring the "Doll
under statutable regulations. The first attempt of
was by Statute 19 and 20 Vic., cap. 27, which exte
definition of "pawnbrokers," so as, if possible, to
them. This statute has not, however, been su

imposition of the same licence duty upon them as is
from the wealthier members of the trade increases
sire to evade the law, and compels them to increase
of interest charged upon the poor persons who
ith them, and thus renders it more difficult than
comply with the statutable restrictions as to the
interest, as the keepers of "Dolly-shops" require
aid not only for their trouble in carrying on their
s, but also for the increased risk to which they are
l for their evasion of the law.

extension of the licence duty of £7 10*s.* to the
class of traders in the country districts was calcu-
o increase the monopoly of the regular pawn-
s, and not to diminish the number of irregular

860 the Halfpenny Act (23 Vic., cap. 21) was passed.
wed pawnbrokers to charge a halfpenny on tickets
s of loans under ten shillings. This was done
itly with the expectation of making the remunera-
such loans sufficiently large to induce the "Dolly-
keepers to come under the law. But I am informed
material effect has been produced by the statute,
t "Dolly-shops" are now nearly as numerous as ever.
e facts prove that the English scale of interest for
f small sums is too low; and I cannot, therefore,
nend that it should be introduced into Ireland, lest
ld lead to the same disregard of the law as has
oduced in England.

ommend that the attempt to restrict charges on
r be abandoned, and that the exception contained
4th section of Statute 17 and 18 Vic., cap. 90, be
l; and that thus the abolition of the usury laws
e complete.

application of these principles to the trade of
oking would only involve the recognition of
in making express contracts in writing, leaving
ting scale to regulate the implied contract in all
which it is not modified by such express contract
as by the repeal of the usury laws the amount

of interest when not expressly stated is regulated
After freedom of contract had been in operatio
considerable time the implied contract might be h
modified to suit the usual mode of dealing betw
parties.

4. *Connexion between Exclusive Trade Privileges, Res*
and Monopolies and the Existing Regulations of th
of Pawnbroking.

In the year 1786, in which the Irish Parliame
provision to establish the trade of pawnbroking by
able regulations, many other trades in the city of
were monopolized by exclusive trade guilds and w
ject to special regulations.

In 1840 all these exclusive guilds were, by the pr
of the Municipal Corporation Reform Act, abolish
the trade of the city thrown open, and the interes
consumer secured, by the competition thereby esta

To the trade of banking (lending money to th
which most nearly resembles that of pawnbrok
Irish Parliament, three years before the Pawnbrok
had applied similar principles by establishing in 1
exclusive monopoly of the Bank of Ireland, and p
ing any other bank with more than six partners.

The monopoly thus established in favour of th
of Ireland was found very injurious, and since its
tion in 1821 other joint stock banks have arisen in
which have proved very beneficial to the shareholc
to the public.

While these changes have taken place in the
lending money in general, the trade of pawnbr
still subject to restrictions as to the parties who m
it on. The taxation on pawnbrokers is imposed
a manner as to prohibit companies (limited or unl
co-operative societies, or even persons in partnersh
carrying on the business of pawnbroking.

I am of opinion that the protection of those w
with pawnbrokers will be effectual in proportion
extent and freedom of the competition ; and I rec

law be altered so as to allow partners, com- and co-operative societies to carry on the business broking.

Statutable Regulations as to the Hours of carrying on Business.

1788, by Statute 28 Geo. III., c. 49, the hours for in pledges in Ireland were fixed as follows:—From lock, A.M., till four, P.M. (*six* hours a day), during ter season, (from the 29th September to 25th March); om ten o'clock, A.M., until seven o'clock, P.M. (*nine* day), from 25th March to 29th September. This ion is still in force.

reat Britain, the hours fixed in the year 1800 (39 Geo. III., c. 99) were more extended. Pawnbrokers lowed to keep their shops open from eight o'clock, ntil eight, P.M. (*twelve* hours a day), from 29th Sept. March, and from seven o'clock, A.M., until nine P.M. (*fourteen* hours), for the remainder of the year, ntil eleven o'clock, P.M., on Saturdays and on the s preceding Good Friday, Christmas Day, and Fast nd Thanksgiving Days appointed by His Majesty.

846 (9 and 10 Vic., c. 98) the hours of business were d for pawnbrokers in Great Britain. They were d to carry on their business in summer (from 25th to 29th September,) from seven o'clock, A.M., until 'clock, P.M. (*thirteen* hours a day), and in winter 29th Sept. to 25th March) from eight o'clock, A.M., n o'clock, P.M., (*eleven* hours a day). The privilege d under the former Act, of keeping their places of s open on Saturdays, and on evenings preceding holi- ntil eleven o'clock, P.M., was still continued to them. ppeared in evidence before the Committee of the of Commons in 1838, that the statutable hours for g goods had not been observed in Ireland, and it ted by Mr. Francis Byrne, pawnbroker, in evidence me, that the provisions as to the hours of business lin have been systematically violated.

859 the pawnbrokers in Dublin sought to obtain a

legal sanction for the hours which they had obse
years; but the Police Commissioners reported aga
Appendix B, p. 98. change. I have obtained this report and annex i
Appendix.

The Commissioners stated that the statutable rest
to nine hours in summer and six hours in winter, t
I have referred, were established in 1788, when the
of police was very defective.

That as an improved system of police was de
the necessity of the limitation had become less urg
consequently that the pawnbrokers had been all
receive pledges from eight o'clock, A.M., till seven
P.M. (*eleven* hours), throughout the year, and u
o'clock, P.M. (*fourteen* hours), on Saturday night.

The Commissioners objected to these hours bein
lished by statute, because they would thereby be d
of a power of search for stolen goods, which the f
the extension of business hours depended on their
sion enabled them to enforce.

They stated that legally the police had no auth
search for stolen property in any house or oth
unless armed with a search-warrant, procured on
of the informant that he believed that his prop
concealed there, and that several cases having occ
which a failure of justice was apprehended from t
of power to search without delay for property bel
be in the possession of pawnbrokers, applicatio
made from time to time for permission to seek for
believed to have been unlawfully pledged. The pe
sought for was refused—not from any dishonest
but rather from a wish to save themselves or the
ants the troublesome necessity of attending to g
dence in matters thus brought to light, and to p
where it became necessary.

The Commissioners thereupon informed the pawn
that if the trade resolved to stand on their legal righ
refuse to aid the police by allowing such special co
as might be nominated by the Commissioners for
pose, to seek after stolen goods, they should not c

Commissioners interpreted the law with equal strict-
d confined them to the hours of business named in
of 1788, as essential to the ends of justice.
Commissioners stated that this intimation had had
ired effect, and that permission to search was con-
and that it was a matter of notoriety that stolen
y was frequently found in pawn offices when it was
for.
power of search by special constables thus estab-
appears to be a very reasonable and effective measure
e; but it ought to extend to those who purchase
-hand goods as well as to those who receive them in
and it should rest on direct statutable enactment,
t on the permissive allowance to disobey the statut-
ovisions which prescribe the mode of carrying on
siness.
hose who advocate legislative interference in the
of trade, the regulation of the hours of business
appear to be one of the simplest matters for the
ture to determine, and when determined for the
ive effectually to enforce. But it appears that for
here have been different rules prescribed for Ireland
Great Britain—the Legislature allowing only six
day for business in winter in Ireland, while in Great
eleven hours, and on Saturdays sixteen hours are
. It appears, however, that the stringent rule in
having become unsuitable has been systematically
rded, by the express sanction of the authorities
to enforce the observance of the law.
e facts show the injurious results which inevitably
the attempts of the Legislature to regulate the
of trade, the law, if impolitic, is soon disregarded, and
his disregard of the law gets the length of an under-
g between those who are bound to obey and those
e bound to enforce it, the most serious evils arise,
urious statute, instead of being repealed, being
. The evasion is, however, so managed that the
are subjected to hours fixed by the Police Com-
ners, instead of those appointed by the Legislature.

I doubt the policy of relying on the restriction
hours of business as a protection against the r
of stolen goods. The police obviously consider t
of prompt search a much more effectual check.
opinion that, if the statutable restrictions as to h
carrying on the business of pawnbroking in Ire
not entirely abolished, the trade should be subje
greater restrictions than in England, and that the pr
of Stat. 9 and 10 Vic., c. 98, should accordingly be e
to Ireland.

6. *Statutable Oaths and Declarations Imposed Pawnbrokers in Dublin.*

By Statute 28 Geo. III., c. 49 (Irish), an oath is pr
to be taken by pawnbrokers resident in Dublin, an
the district of the City of Dublin, or within thr
thereof. No similar oath is required from paw
residing in any other part of Ireland; nor is it req
Great Britain.

Promissory oaths are objectionable inasmuch
reduce every violation of duty, however trifling, to
of a solemn promise. Their futility, as a security,
by the facts in the case of pawnbrokers. Although
imposes the obligation of carrying on the business
broking pursuant to the several clauses, regulati
alterations mentioned in the Act, yet it appe
the statutable regulations with regard to hours ha
systematically disregarded for years, and disregard
the assent of the Police Commissioners, before w
statute requires the oath to be taken.

The policy of the present day is against pro
oaths; and I recommend that the exceptional oath
from pawnbrokers in the Dublin district by Stat.
III., c. 49 (Irish), be abolished.

7. *Pawnbrokers' Licences, and the Conditions pre the granting thereof.*

In Great Britain pawnbrokers are only required
out a licence from the Excise. For each year end

duty of £15, as licence fee, is charged in London and
ister, and within the limits of the district formerly
as "the twopenny post district," and of £7 10*s.*
country. In Ireland, pawnbrokers have been
42 (by Statute 5 and 6 Vic., c. 82, sec. 17), subject
nce duty. From the year 1842 until 1854, pawn-
within the city of Dublin or the Circular Road,
bliged to pay £15 licence duty (the London scale),
the latter year the duty on Dublin pawnbrokers
uced to the English country scale of £7 10*s.* (Stat.
18 Vic., c. 83, sec. 20), which is thus uniform
iout Ireland. In addition to these Excise licences,
okers in Ireland, outside the district of the metro-
r three miles thereof, have to obtain a certificate
e County Treasurer or Town Clerk that they have
into and perfected the securities required by Stat.
. III., c. 43, and they are obliged to pay a fee of
on the receipt of such certificate. This certificate
deposited with the Marshal of the city of Dublin for
tion, for which he is entitled to a fee of five shillings.
security into which the pawnbrokers in Ireland
the specified limits are required to enter, is a bond
, together with three sureties, each in £100. The
uty payable on the bond is fifteen shillings.
r Stat. 28th Geo. III., c. 49, the security required
city of Dublin and within three miles thereof, is
and three sureties each in £300. This involves
r stamp duty on the bond.
Committee of the House of Commons in 1838
l that the provisions of the Act as to giving security
n most grossly neglected.
further reported their opinion that there seemed
o good object attained by requiring pawnbrokers
security for the due performance of their trust.
Crean, the late Marshal, stated before me that "many pawnbrokers, six or seven in Galway alone, are carrying on business without giving securities. The only method of putting a stop to this is for the Marshal to summon before the local magistrates. Many pawnbrokers

Appendix A, p. 49.

"have got no licences from me. They have paid th
"duty to the Excise, and in that case they enter
"bonds." He also called attention to the singular
of pawnbrokers in the County of Dublin. The
Treasurer of this County was abolished in 1844.
which abolished it provided for the discharge of
the duties of the Treasurer, but omitted to ma
provision respecting his duties as regards pawn
The Secretary of the Grand Jury has refused to ta
securities, so that for the last twenty-three yea
machinery for binding pawnbrokers by security
county of Dublin has been defective."

The Marshal states further—"that for many yea
has been neglect with regard to the giving of se
and that he sees no prospect of enforcing them at

The effect of securities being nominally requi
impose a tax on pawnbrokers in the shape of sta
on the bond, and fees to the officers, which h
existence in Great Britain. The pawnbroker is, m
burdened with the law costs of getting the bond
filled, and with the trouble of seeking for and o
securities. When these taxes and the regulations pr
by the statute are, to any extent evaded, there is an
lity of taxation established in favour of those who d
the law, and against those who observe it.

Whatever policy may have led the Irish Parlia
prescribe the giving of security, there does not
to be any reason for perpetuating a restriction and
on the trade which has never existed in England
am of opinion that the provisions of Stat. 2
III., c. 43 (Irish), and of Statute 28 Geo. III., c. 49
requiring pawnbrokers in Ireland to give security
be repealed.

8. *Differences in the application of Penalties in Irelan*
Great Britain.

In Ireland the penalties incurred by pawnbro
recovered at Petty Sessions, are applied in the sa
as other penalties recovered at these courts;

have the power to award one-third of the fine to
rmer. In Great Britain the whole fine goes to the
r, but the justices have power to mitigate the

restrictions on the trade were removed the num-
ases where penalties would be incurred would be
ied: and it appears in this case better to retain
eral law in Ireland as to penalties than to make
ption with the view of assimilating it in one point
th the English law.

*rences in the Taxation upon Pawnbrokers in Dublin
m that imposed upon those in the rest of Ireland and
Great Britain.*

brokers within a district around Dublin extending
miles beyond the city boundary are liable to an
charge, by way of licence duty, of £100 Irish cur-
equal to £92 6*s.* 1¾*d.* present currency) in addition
icence duty of £7 10*s.*; and this duty is applied,
the general taxes, but to defray the cost of the
Metropolitan Police. The existence of this tax was
he matters specially complained of by the deputa-
o waited on Mr. Fortescue, when Chief Secretary,
spect to the trade of pawnbroking in Dublin.
deputation urged that this is really a burden on
ple who pawn. In this view of the incidence of
the deputation appear to me to be perfectly
A tax on the profits of every trade falls on
sts, but a special tax on the capitalists in any
ar trade falls on the customers by whom that
supported.
tax creates a burden far beyond its amount. As
ne commencing the trade, on however small a scale,
ay the full tax at once, it is a very serious impedi-
beginners and to those who wish to do business
all scale, and thus it produces an artificial mono-
favour of those who have an extensive or a long
hed business.

This tax is no less exceptional in its applicati in its amount, for I do not find that there other city or borough in the empire where rec had to a similar tax for the support of the polic history of the tax discloses the fact that the pur which it was originally instituted is now effected b means.

The protection of the city of Dublin was in earl intrusted to watchmen, and they appear first t been subjected to legislative regulation in 1715 (S Geo. I., c. 10, secs. 10 & 11, Irish), and the source fro the cost was defrayed was a tax on houses in the of the city of Dublin and the Liberties of threep the pound according to the valuation for ministers' Further regulations with regard to them wer (Statute 17 and 18 Geo. III., c. 43, Irish) in th 1778.

In 1786 (Statute 26 Geo. III., c. 24) the Lor tenant was enabled to appoint three Police Commi who might employ four hundred watchmen an night constables; and the cost was to be defrayed by a tax on houses and tenements not exceeding in the pound according to the valuation for m money; but (sec. 20) no house was to pay on mo £60 annual value.

From 1715 until 1788 the cost of the police was entirely on the houses and tenements of the city; the latter year, when an increase of the watch was re certain taxes were (Statute 28 Geo. III., c. 45) i by requiring special licences for particular trades purpose of defraying the cost of one hundred ad constables. The effect of this enactment was to h cost defrayed, as is now the case in all the police in towns throughout Great Britain, partly by a houses and land within the town boundary and pa the consumers of certain commodities.

The proportion then established would appea that four hundred and forty men should be suppo

rs of houses and tenements, and one hundred men
ersons who dealt with the traders in the taxed
hich gives a proportion of about 83 per cent. on
operty, and 17 per cent. on persons dealing with
ders.

gst the taxes on consumers then imposed was a
uty on pawnbrokers within the district of the
lis, and the amount then fixed was £10 (Irish) per
sec. 18). The other taxes imposed for the same
by this Act (sec. 13) were licence duties upon
of trees, sellers of old books, sellers of glass bottles,
ld clothes.

e year 1800 a further increase was made in the
of the watchmen and constables of Dublin, and a
cale of pay granted to those already employed;
rder to provide a fund for this increased expense
ional duty of £90 (Irish) a year was imposed on
brokers "within the district of the metropolis or
s thereof" (Statute 40 Geo. III., c. 62, sec. 19);
was the only trade which was subjected to extra
nt at that time. It is to be observed, that this
x was imposed by the Irish Parliament previous
nion.

08 the old watch was abolished, and the police
ablished, and the tax on pawnbrokers was con-
r the maintenance of the new force. Up to the
9 the levying of this imposition was a rude method
g the poorer classes of society contribute to the
of the police; but in that year the general taxes
the poor contribute began to be applied to the
of the Dublin Police, £26,000 being then
or this object.

the operation of the Dublin Police Act of 1836,
has greatly increased. There is now a sum of
contributed from the general taxes for this
If to this sum be added the special tax on
ers of £5,261 11*s.* 6*d.*, we find that the contri-
persons who consume commodities or deal with

traders amounts to £55,861 11*s.* 6*d.*, while th
house property and land within the Metropolita
District and the other local taxes applied to the
of the police, do not amount to more than £36,9
that 60 per cent. of the cost is defrayed by a tax
on persons dealing with traders, and 40 per
that on house property and land and some oth
subjects of taxation. This proportion is entirely
from that established between the general and lo
in the more recent arrangements as to the suppo
police in the boroughs of England and of Scot
Stat. 19 & 20 Vic. c. 69, s. 16, and by Stat. 20 &
c. 72, s. 66. Under these Acts only 25 per cen
charge for the pay and clothing of the county and
police in Great Britain is paid out of the gener
while 75 per cent. is defrayed from the local taxe
those on houses and land.

This proportion is also different from that which
the London Metropolitan Police District, where th
bution from the general taxes is £164,848 or 28 p
while the local taxes contribute £418,941 or 72 p

A special tax for the purpose of making the p
tribute their share to the support of the Dublin
which the imposition of a special local licence
pawnbrokers originally effected, is no longer req
they now contribute so much through the genera

I am of opinion, therefore, that the abolitio
special tax on pawnbrokers in the Dublin dist
local question between the poor people who pa
the owners of rateable property in the Dublin M
litan Police District, and that the relief of the
whom the incidence of the special tax falls is to b
in an extension to the rateable property of the
Metropolitan Police District of the proportion o
bution to the police which has been established b
ment in the cities and towns of England and Sco

...r in which the Duty of selling forfeited Pledges is discharged in Dublin.

...ird point of the inquiry intrusted to me is "the ... in which the duty of selling forfeited pledges is ...d in the city of Dublin by the officers intrusted ... same, and the amount of fees or remuneration ...d in respect of such sales, by whom received, and ...plied."

...stem of having special officers for the sale of ... pledges is peculiar to Ireland. In England the ...ledges is perfectly free, the pawnbroker being to select his own auctioneer.

... Irish Pawnbroking Act of 1786, it was required ...re should be appraisers on a system somewhat ... that established in France, and it was provided ... appraisers should be auctioneers to sell forfeited

...ystem however, appearing to trench upon some ...s of two ancient offices of the Corporation of ...was abolished within the Dublin district, and in its ...eculiar system was established, differing from that ...xisted both in England and France. The ap... ...nt was abolished, but the monopoly of sale by ...was established by having this privilege confined to ...ioneers, two of these persons holding the corporate ... Marshal and Swordbearer of the city of Dublin, ... being appointed by the Lord Lieutenant.

...uctioneer was to act for each of the four police ... into which Dublin was then divided, and the ...room was to be as nearly as possible in the centre ...vision, apparently in order that the persons who ... goods might attend the sales; but this view, if ... was very imperfectly secured, as a pawnbroker ... in any divisional saleroom without regard to the ... in which the pledge is taken.

...ctice, however, it has been found that those ...ds, having been unredeemed for twelve months, ...ght forward for auction, are seldom able to

purchase them, and in general the purchasers ar
in second hand goods.

These auction rooms still exist in the four di
the city, but are all situated within a short di
each other, almost in the centre of the city.

The Irish Parliament made very strict provisi
the manner in which the auctioneers should discha
duties, allowing them however to employ assista

In consequence of the circumstance that tw
statutable auctioneers were corporate officers, th
was brought under the notice of the Commissio
inquired into Municipal Corporations in Ireland

With regard to the Marshal, the Commissioners
a very unsatisfactory state of affairs. They stated th
not act as auctioneer, but farmed out his office
week, besides having received a gratuity of £75
appointment—that the deputation to the acting a
was for his (the Marshal's) life, and was ma
presumed, under colour of that section of th
which authorizes the appointment of clerks or as

The Commissioners then proceed to expres
strong opinion on the manner in which the law
carried into effect. They say—

"By this monopoly of the place of auctioneers of forfei
all competition on the part of other auctioneers for these sales
The appointees of the offices, by the system of farming t
'assistants,' reduce them to places of sinecure emolument to
abandoning all attention to the conduct of an establishment
be permitted at all on the present exclusive system, ought to
with vigilance for the protection of the poorer classes of soci

The Committee of the House of Commo
inquired into the laws and regulations which af
trade of pawnbroking in Ireland in 1838, after
to the preceding account of the Commissioners
cipal Inquiry, add—"The additional evidence
"the subject before this Committee is quite su
"prove the urgent necessity of a total reform of t
"in Dublin," and they conclude by very earnest
mending "that no restriction be imposed either

where upon the number of auctioneers whom the brokers may employ."

four auctioneers have a concurrent monopoly not be extinguished on the death or by the of any one of them, and as two of them were ed by the Lord Lieutenant, a difficulty was in regulating the offices of Marshal and Sword- by municipal legislation alone. In the Muni- orporation Reform Act, provision was made for pensation of both the Marshal and Swordbearer, they were not continued in office by the new Town ; and provision was also made that in case of the of the Marshal and Swordbearer, their assistant ers should continue to act as long as they fulfilled litions under which they were appointed. Power vever, given to the Town Council to remove them, them at the same time a claim to compensation, y were officers of the borough or body corporate. e removal of the Marshal of the old Corporation, of £444 a year was granted to him as compensa- he is still in receipt of that annuity.

Bentley, who held the appointment of Deputy er, both to the Marshal and Swordbearer, was ved, but continued to hold these offices until his 1851.

Town Council appointed Mr. Thomas Reynolds fice of Marshal, and in 1842 appointed Mr. Arkins to that of Swordbearer, but neither of tlemen ever acted as auctioneers, but left the e discharged, as before, by Mr. Bentley. By an ent made with these officers, they held their nts under certain regulations, which specified ies and required all fees to be accounted for to ration fund.

Mr. Bentley's death in 1851, the Town Council, uence of this arrangement, were interested in er in which the offices of assistant auctioneers filled up, and accordingly they appear to have

exercised a considerable control over the appoin
assistant auctioneers ever since. Their object, ho
not to require either the Marshal or Swordbeare
charge in person the duties of their offices with r
the sale of forfeited pledges, but simply to ob
largest rent or revenue from the persons appoint
nally as assistants, but really as deputies to these

I have to report, therefore, that the main obje
the manner in which the duty of selling forfeite
is discharged in the sale-rooms under the ca
Marshal and Swordbearer, which was noticed
Municipal Corporation Commissioners in 1835, a
by the Committee of the House of Commons in
still in existence. The officers appointed by s
perform these duties, and who enter into personal
for doing so, appoint a deputy upon whom the en
is devolved, and who gives security, not to the Po
missioners, but to the officers themselves.

Appendix A, p. 50. The evidence on this point is very explicit. M
the late Marshal, and as such one of the auctioneers a
by the Town Council, says—"Practically I have n
do with the auctions;" and his appointment of Mr
to act for him, is in these terms—"I appoint

Ibid, p. 57. deputy;" and instead of his paying his assistant
and receiving the fees, there is a condition impos
"you paying the same rent for the room."

The Commissioners of the Municipal Corpor
quiry notice that the statute only authorizes "a
and not "deputies," and it was stated to me tha
counsel had given opinions to the same effect.

After Mr. Reynolds's death, and upon the app
of Mr. Crean to the office of Marshal, the Town
appointed the Town Clerk to act as Marshal pro
as such to be a statutable auctioneer of forfeited

Ibid, p. 56. and he appointed Mr. Bentley assistant auctione
"the terms and conditions already existing betw
"self, the late Marshal, and the Corporation."

Mr. Arkins, who, as Swordbearer of the city

842. has for a quarter of a century been one of the ...ic auctioneers, says, "I receive £100 a year as ...neer, but I have really nothing to do as auctioneer." Appendix A, p. 51.

n Mr. Arkins's deputy, Mr. William W. Bentley, d. Mr. John Bentley had to present a memorial to wn Council that they would sanction his appoint- y Mr. Arkins. The Town Clerk informed Mr. that the Town Council had sanctioned his appoint- nd had referred the question of the "reduction of t" of the sale-room to Committee No. 3 for report. Bentley had offered £5 a week (£260 a year), of £8 a week (£416 a year), which had been the eviously paid by his brother.

Committee recommended that he should be required a rent less than that which had till then been paid, ater than that which Mr. Bentley had proposed. This ...endation was however rejected by the Town Council ...e subject was brought before them. Mr. Bentley ...l in July, 1866, and then, by the direction of the Council, Mr. Arkins inserted the following advertise- the Dublin papers:—

"Thomas Arkins, Swordbearer of the city of Dublin, will receive ... from persons willing to become his deputy for the sale by ... forfeited pledges in the Rotundo Division of the said city of ...

... applications will be received up to Friday, the 30th August ...ressed to

"Mr. Thomas Arkins,
"2, Finea-terrace,
"Aughrim-street."

advertisement is not for an assistant at a certain ...ut for a deputy to bid for a monopolized trade. therefore, not for testimonials, but for sealed appli- like sealed tenders for a contract.

...dvertisement did not lead to an appointment, and ...6th November, 1866, Mr. Bentley's original offer ...week was accepted, and he was appointed on those

...convenience of allowing an office to be discharged ...y was strongly manifested in this case; for between

the time when the deputy resigned and was reappoi
a period of nearly five months—the principal left the
of his office, so far as auctions were concerned, who
performed.

The Swordbearer receives out of the sum paid
deputy for being allowed to receive the fees of hi
nearly £100 a year. The balance, which now a
to nearly £160 a year, and which from 1856 til
amounted to £316 a year, has gone to the funds
Town Council of Dublin.

It appeared in evidence before me that the busi
selling forfeited pledges was a special business, re
peculiar training and a large capital. I am of o
therefore, that the duties of a pawnbroker's auc
and of the Swordbearer of the city of Dublin are
sistent, and that the Swordbearer should not be
the auctioneers of forfeited pledges.

The Town Council should be empowered by st
regulate the duties of the Swordbearer, and t
provision for his salary from other sources than the
arising from the sale of forfeited pledges, and I reco
that provision should be made to secure the salary
present Swordbearer, and that power should be give
Town Council to superannuate him.

I think that the office of Marshal should also
rated from that of auctioneer of forfeited pled
that the Town Council should be empowered by
to regulate the duties to be discharged by the
and to make provision for the payment of his sala
other sources than the profits arising from the
forfeited pledges.

If the offices of auctioneers of forfeited pled
continued in the patronage of the Town Council
opinion that the town funds should derive no ad
from the appointments, and that if the auctioneers
by salary, it should be fixed by the Lord Lieute
Privy Council, and the surplus (if any) go to re
fees charged on sales.

The question however remains for consideration,

special be special official auctioneers of forfeited
s.

er the Act of 1788 the Lord Lieutenant has the
of appointing two such officers, but the same
of discharging the duties by deputy and farming
office prevails in the case of these two offices, as
of the Marshal and Swordbearer.

Gerald Gray, one of the auctioneers appointed by
rd Lieutenant, stated that he does the duty by
. In the divisional sale-room to which he is
ted the business is really carried on by Mrs. Farrell,
dow of his predecessor, who has a large capital
ked in the business. In order to comply with the
of the statute, her book-keeper, who receives a
from her, has been appointed assistant to Mr. Gerald
She and her friends are security for this assistant,
e appointment is only a nominal one. All the
sements of auctions are in Mrs. Farrell's name, and
oints the auctioneer who actually sells the goods.
only effect of the Act of Parliament is, that a
nan who was not brought up to the business of
eer, and has never acted in that capacity either
or since his appointment, receives £260 a year,
t having any duty whatever to discharge; he and
rities being guaranteed against any risk by counter
ies of equal amount.

Farrell, who has £8,000 embarked in the business
ioneer, holds her position as a yearly tenant of Mr.
nd has to pay £260 a year to him as such.

practice of discharging the duty by deputy prevailed
the appointment of Mr. Gray. Twenty years ago
es Riddell held the office, and he was succeeded
Dodd. Both of these gentlemen appointed depu-
former employing Mr. Macnamara, and the latter
rne, to act as auctioneer.

n Mr. Farrell was appointed to the office in 1850
loyed Mr. Clarke as deputy, and he did not carry
business himself until about nine years afterwards,
is deputy absconded.

Evidence Appendix A, p. 63, *et seq.*

Evidence Appendix A, p. 75.

The other auctioneer appointed by the Lord Lieu is Mr. John Reilly, barrister-at-law. At the time appointment he held the office of water-bailiff un Town Council from which he has since retired on sion. He had never acted as auctioneer befo appointment, and he states that although he took licence on entering upon the office, he got nothing He explains the reason of this to be that he woul sell for ready money, and that on such a system the brokers could not afford to employ him, as the goods be sacrificed unless the brokers were allowed to h credit. He then says, "As I did not understa business thoroughly I did not wish to speculate ca it." He accordingly appointed a deputy, who d capital into the business, and who understands th thoroughly. Mr. Garland, the deputy, keeps the ac in his own name, and makes the returns requi statute in his own name. He holds his appointm deputy for Mr. Reilly's life, and pays him £5 a The effect of the Act of Parliament, so far as Mr. is concerned, is that he receives £260 a year for selected a competent deputy to discharge the dutie office.

In explanation of his mode of proceeding, Mr. states that "he farmed the office according to th of the trade." His predecessor, Mr. Burke, had h office from 1807 till 1865, and although origin auctioneer, he had for many years appointed de Mr. Clarke, Mr. M'Nevin, and Messrs. Young and had acted in that capacity for him, and all of th failed in the business.

Such are the facts I have to report as to the ma which the duty of selling forfeited pledges is discha the city of Dublin by the officers intrusted with th

I recommend that the statutable offices of auct for the sale of forfeited pledges in the Dublin dis abolished, and that the trade be thrown open, as i land.

If this recommendation be not adopted, and

be continued. I am of opinion that no one should be ... for them who is not an auctioneer of seven years ...g; and that no one should be allowed to hold them ... not discharge the duties in person.

... *Amount of Fees received for the Sale of Forfeited Pledges.*

... gross commission received by Mr. Bentley on an ...e of five years in the Stephen's-green Divisional ...om is £1,779 a year, and that received by Mrs. ... in the Barrack Divisional Saleroom is £1,469 ...r. The amount received by Mr. Bentley out of the ...do Divisional Saleroom in 1866, was £1,447.

... amount received by Mr. Garland in the Workhouse ...onal Saleroom in 1866–67, was £2,010, making the annual amount of fees on pawnbrokers' auctions in ..., £6,705 a year.

...se fees are received by the deputies (Mr. Bentley, Mrs. ... and Mr. Garland) who discharge the duties. They ...died in the first instance to defray the expenses of the ... and of the auctioneers who actually sell the goods, ... the remuneration of the assistant auctioneers. The ...e left as profit for the four sinecure offices amounts to ...2 a year, or 16 per cent. on the gross fees of £6,705 a ...howing that the charges on the poor could be reduced ...t amount at least, if these offices were abolished.

Period prescribed for the Sale of forfeited Pledges.

...Great Britain no pledge can be sold before twelve ...s have elapsed. In Ireland pledges on which loans ...ceeding 20*s.* have been made may be sold in six ...s. those on which loans over 20*s.* and not exceeding ...ve been made may be sold in nine months, and those ...ich sums over 40*s.* have been lent may be sold in ... months. Mr. Bentley states—"I think that the ...ds assigned for keeping goods are too long, viz., ...ine, and twelve months. The sales would be better,

"and thus the public would be benefited if the
"were not so long. Goods become unfashionable
"their value is depreciated by being kept." Mr. I
suggests periods of three, six, and nine months i
of those at present prescribed.

Mr. Alfred Keeson, the author of a treatise
comparative laws of pawnbroking in England, I
France, and Belgium, in a communication he ad
to me in reply to some inquiries of mine, says—

Appendix B, p. 112.

"I do not think that such a system (*i.e.*, the Irish system) wo
good as one regulated by the nature of the articles pawned. Plat
lery, or mathematical instruments, would hardly suffer in value
kept for twelve months, but clothes and woollens do. They are
injury from lying by closely packed for so long a time, and from
of fashion also.

"Again, it is common for winter clothing to be pledged at
mencement of summer, and if it lies twelve months and beco
feited it will go for sale at the period when such goods are
demand. Summer clothing pledged at the beginning of winte
forfeited, be subject to a similar depreciation."

Mr. Keeson concludes with the following suggest

"It seems to me, therefore, that if different terms of forfeitu
be maintained, it would be better that the six months should be
to clothes (instead of to pledges indiscriminately upon which
under have been lent), which would then, if forfeited, go for s
when they would be most marketable."

Evidence Appendix A, p. 63.

From a return which I obtained from Mr. F
Byrne, pawnbroker, in Dublin, it appears that the
age period of redemption at one of his establishme
ten weeks and two days, and he states that he ke
pledges of plate, jewellery, and watches, for twelve m

I am of opinion that the periods for which goods m
kept by pawnbrokers before sale are, for a large c
pawns, too long, both in Great Britain and Irelan
that they have been fixed on wrong principles. I
fore recommend that a period of three months for p
on which loans not exceeding 40*s.*, and of six mont
pledges on which loans above 40*s.* have been
except plate, jewellery, and watches, and of nine m
for this latter class, should be fixed as the implied

ases where no other term is fixed by express con- the party pawning and the pawnbroker being left ly free to contract for any period which they may

gulations as to the Mode of selling Forfeited Pledges.

Great Britain where the sum lent is 10*s.* or under, dge is forfeited in twelve months, but pledges on sums between 20*s.* and £10 are lent, cannot be fore twelve months have elapsed, and after that can be sold by public auction only. The pawn-, as already mentioned, chooses his own auctioneer. e simple provisions are made to secure that the shall receive fair notice of the approaching sale t offensive publicity. The goods must be exposed w, and a catalogue published containing the name ace of abode of the pawnbroker, the month in which ods were received in pawn, and the number of the

ertisements must also be inserted in the newspapers, notice of the sale, and containing the name and of abode of the pawnbroker, and the month in the goods were received.

reland there are two distinct systems, one established Dublin district, and the other in the rest of Ireland, th differing from the English system.

oth the Irish systems there is no absolute forfeiture, a sale is necessary in every case, however small n.

provision in the Irish statute as to advertisements in Dublin is very defective. Instead of the effectual on of the English statute to secure fair notice to any nxious to be present at the sale, as the owner of the n pawn, it only provides "that the auction shall be d publicly advertised in the manner that was usual stomary for such sales to be advertised," that is the year 1788, in which this statute was passed; at manner was would be a matter for inquiry. The does not, as in England, require the pawnbroker's

name to be advertised; and it appeared in evidence
me that some of the pawnbrokers in Dublin ha
objection to their names appearing in the advertise
and where that is the case the auctioneers will not
their names.

Again, there is no provision, as in England, fo
loguing the goods, and inserting the number of the

Instead of these simple securities provided by the E
Act, the Irish law provides in Dublin a system of s
notice personally on the owner of an intention on th
of the pawnbroker to sell his goods, but not of the
which the sale is to take place. This is done in al
where the sum lent is above 4*s*. The notice
the sum borrowed, gives a schedule of the good
posited, and requires the borrower to redeem
fourteen days after the service of the notice, if he be
in the house given by him as his residence at the t
pledging the goods, that house being within the Ci
road of the city of Dublin.

These notices for sale must be served by perso
ployed by the Marshal of the City of Dublin
capacity of Registrar of Pawnbrokers, and he b
entitled to a fee of 3*d*. for each notice where the su
is between 4*s*. and 20*s*., and a fee of 4*d*. where th
lent exceeds 20*s*.

In case of any gross neglect of service of a notice, th
shal becomes liable to make good the fee to the pawnb

This system of notices seems to have been founde
large extent on the assumption that parties wh
pledged would attend the sale of their property,
appears that this is not the case; the parties who atte
sales being almost exclusively dealers in second-hand

Evidence Appendix A, p. 68. Mr. O'Sullivan says—"Very few outsiders othe
"dealers come in;" and he adds—"The Marshal's n
"not of much importance; indeed the system might b
"well abolished without any loss whatever to the p

Ibid, p. 62. Mr. Francis Byrne states that some owners of p
goods attend auctions, not one perhaps in a hundre
that the notices are of no use.

xplains that he has also a large country business
rties residing within the Dublin district and
the Circular-road. To these parties no notice is
and he never heard of any dissatisfaction amongst
..try customers, in consequence of their not having
l notice of sale.

Gentley states that owners never come to auctions their pledged goods after having received notice intended sale, and that notices are quite useless. Evidence Appendix A, p. 53.

le to Mr. Crean, Marshal, and Registrar of Pawn- . stated to me that he had reason to think that the pawnbrokers sell goods without giving the owners of an intention to sell. "From a comparison of umber of notices sent out by some pawnbrokers o a large business with the number sent out by , I am convinced that they do not send a sufficient er of notices." *Ibid*, p. 50.

Crean furnished me with elaborate returns in support this statement. Appendix A, p. 89.

disadvantage of the Dublin system of notice is, arties wish, from motives of privacy, not to have shal's officer coming with a notice like a summons, ly method of avoiding it is by refusing to give any or by giving an address outside the Circular-road ; his way the statute which provides that the true abode of the person pawning shall be recorded case, is evaded.

mmend that the system now established in Dublin g the service of notice obligatory be abolished, and provision of the English statute 39 and 40 Geo. 39. s. 17, as to advertisements, be extended to the absolute forfeiture being limited to cases of which four shillings only, or less, have been lent. de, however, for cases in which parties pawning stipulate for notice, it should be provided that if en requests that notice should be given, the pawn- shall be bound to give notice by registered letter, notice shall specify, not only the place, but the day with power to charge for the cost of the letter.

14. *The Duties of the Marshal of the City of D[ublin] regard to the Registration of Pawnbrokers' Secur[ities]*

The duties of the Marshal in connexion with the tration of pawnbrokers' securities are not confined Dublin district, but extend to the whole of Ireland.

Stat. 26 Geo. III. (Ir.), c. 43, s. 40.

Each pawnbroker is required within one month receiving a certificate of having perfected his sec from the County Treasurer, or Town Clerk, to regi with the Marshal of the City of Dublin, and to pay a five shillings.

If the suggestions I have made for placing pawnb in Ireland in the same position as those in Great B by being exempted from security, be adopted, this the Marshal's duty would come to an end.

The income arising from the five shilling fee is o trifling amount, being, on an average of five years in 1866, £11 4*s.* 1*d.* a year.

The registration is now wholly unnecessary as a of obtaining a list of pawnbrokers, for which it w bably intended at the time the registry was estab A more complete list could be obtained from the of Inland Revenue, by whom the annual licences to brokers are issued; and the late Marshal, Mr. Crean to me that it was to the Inland Revenue officers he for information to enable him to ascertain the names who were not registered with him; and in the M return the number of pawnbrokers registered whole of the year 1865 is only 609, whilst the Revenue returns give 619 as the number of licences during the year ended 25th March, 1865.

15. *The Duties of the Marshal of the City of Dub regard to the Monthly Returns of Pawnbrokers out Ireland.*

26 Geo. III. (Ir.), c. 43, s. 41.

By the Act of the Irish Parliament of 1786, pro made for each pawnbroker in Ireland making a return on oath of the number of sums lent by the gross amount thereof. The Marshal is bound

...urns in books kept for the purpose, and to ...bstracts of them to each House of Parliament at ...nencement of each Session.

...rtained that the duty of entering the returns ...was very carefully performed during the time of ...er Marshal (Mr. Reynolds) by his clerk, Mr. ... who was continued by Mr. Crean after his ...ent. The abstracts are regularly compiled and ...ed to Parliament, but have not been ordered to ...d.

...lue of the statistics thus collected is seriously ...by the number of pawnbrokers who neglect to ...urns.

... return supplied to me by Mr. Beahan, it appears ...number of pawnbrokers registered who omitted ...eturns was as follows :— Appendix B, p. 108.

	Number registered with Marshal.	Number omitting to make returns.
1843, ...	491	49
1844, ...	467	20
1845, ...	504	23
Average of three years,	487	30
1864, ...	563	46
1865, ...	609	76
1866, ...	624	87
Average of three years,	598	69

...mber in recent years who neglected to make ... a very considerable per-centage of the entire ...gistered, and that number, as already noticed, ...of the number of excise licences issued.

...rshal is entitled to receive a fee of 1*s.* on each ...t is, twelve shillings a year from each pawn- ...This fee produced on an average of five years ...5, £292 a year.

... pawnbrokers who took out excise licences had ... year, £36 more would have been collected in ...43 more in 1865.

... Marshal, Mr. Crean, in his evidence stated ...ps had been taken to enforce the penalty ... pawnbrokers who refused to "render monthly Evidence Appendix A, p. 49.

returns." The pawnbrokers who do send in send them irregularly, often forwarding returns whole twelve months at one time; so that the parl ary abstract cannot be made out in proper time.

He also stated that he considered the parlia returns quite useless; and that the only object monthly return by pawnbrokers is to enable the to make the parliamentary abstract.

No similar returns are required from pawnbr Great Britain; and I am of opinion that pawnbr Ireland should be put in the same position as Great Britain, and that they should be exempt making returns; and I recommend that the prov Statute 26 Geo. III., c. 43, sec. 41 (Irish), which the obligation of making the returns, and of payi of one shilling on each return be repealed.

16. *Amount of Fees received in respect of Duti Marshal, by whom received and how applie*

The income of the office of Marshal for five yea 1866, has been as follows:—

	£	s.	d.
1862	1,043	7	9
1863	968	13	11
1864	927	9	3
1865	919	7	6
1866	837	7	7
	4,696	6	0
Average of five years .	939	5	0

This income does not include the sum deputy (Mr. Bentley) realized by carrying on th of auctioneer. The Marshal's income arises sources; and the following table contains the a the average amount of each source of income for

—	1862.	1863.	1864.	1865.
	£	£	£	£
1. Paid by Deputy Auctioneer, . . .	318	312	312	31
2. Fees on Notices of Sales, . . .	413	344	299	26
3. Fees on Pawnbroking Returns, . .	302	304	306	32
4. Fees on Certificates of Securities, .	10	8	10	1
£	1,043	968	927	91

... is income the late Marshals, Mr. Reynolds and ... received a salary of £350 a year: the present ... has been appointed at £300 a year.

...shal is also allowed for the salary of three clerks; ... a year, and two at £52 a year; £26 a year for ... £14 or £15 for incidentals, being a total charge ...bout £524 a year; so that the Town Council ...edit out of the office of £400 a year.

...funds of the Town Council are charged with Mr. ...ker's compensation of £444 a year as Marshal ...old Corporation; but the Town Council virtually ...e funds charged with his compensation out of the ...erived from the office.

...ts of the Differences of the Laws and Taxes upon those who pawn in Dublin.

... the subjects into which I have been specially di... inquire by the Commission is—"The effect of the ...s in the laws as to pawnbroking, in the taxes and ...ed, and in the system of selling forfeited pledges, ... rate of interest, ticket money, and other charges ...ous pawning in the city of Dublin as compared ...r parts of the United Kingdom."

...e of interest allowed to pawnbrokers is higher ... than in England, and the ticket money on the ...ss of pawns is a penny in Ireland, while it is a ... in England. The existence of "dolly-shops" ...d proves that the English rate of interest and ... ticket is, for the smaller class of loans, too low. ...believe that the rate of either interest or ticket ...—beyond an implied contract—be satisfactorily ...by law; and I believe the only protection to the ...ese matters is to be found in freedom of con... unlimited competition in the trade.

...cial tax upon pawnbrokers in Dublin amounts ...age, in recent years, to nearly £5,000 a year; ...ire of this falls on the poor people who pawn. ...s from fees on auctions of the four offices of ...Sword-bearer, and pawnbrokers' auctioneers,

appointed by the Lord Lieutenant, amount to £1
year; and this also is a tax on the poor people who
A considerable part (£323) of the Marshal's income,
from the fees paid for serving notices of sale may
considered a direct tax on the people who pawn
believe the London system of advertisement woul
more satisfaction to them, and very few special
would be required if it were adopted.

The expense and trouble of pawnbrokers, as to ob
licences and making returns, also falls on the poor;
are £40 a year and the remuneration for their troub
be estimated at £60, making another £100 a year

The whole direct burden imposed by the speci
may be taken at £6,500 a year. It appears t
sums lent in Dublin, in pawn in one year, was £7
the average time for which the loan is made is te
and two days, so that the capital engaged in the
is about £150,000.

The direct tax on pawnbroking in Dublin is th
4 per cent. on the capital employed—an enorm
when we consider that a similar tax on the fund
depositors in banks, and debenture holders wo
away their entire income.

The indirect effect of these taxes, by creating m
in the business of pawnbroker, added to the actu
poly of the official auctioneers, creates a furthe
on the poor which it is difficult to estimate, but
may fairly estimate as at least twice the amou
direct tax, viz., £13,000 a year.

If the owners of property would pay the
£5,000 for the support of the police in order tha
ation on pawnbrokers might be abolished, they w
the satisfaction of relieving their poorer breth
extent of £19,000 a year.

18. *Claims for Compensation.*

If the changes which I have recommended
out, there are eight officers whose claims for co
would have to be considered.

...larshal's claim could be best met by authorizing
...n Council to provide for his salary of £300 a year
...e funds at the disposal of the Town Council, and
...new duties to the office.

...larshal's clerk, Mr. Beahan, could be provided for
...anner, by being attached as a supernumerary to
...e offices under the Town Council until a vacancy
...

...word-bearer's salary of £100 a year could be con-
...like manner for the duties he now performs, and
...ight be given to the Town Council to super-
...him, and in the case of any new Sword-bearer the
...ight be paid for such additional appropriate duties
...own Council should annex to the office.

...erald Gray, one of the two Divisional Auctioneers, Evidence Appendix A, p. 71.
...ointed on the express understanding named in
...ert Peel's letter, that he took the appointment
...o any changes in the nature and duties of the
...ich the Legislature might think fit to make.
...ght be compensated by allowing him the amount
...resent salary upon the terms of his performing
...ate duties, either under the Town Council, or in
...cial department in Dublin, to be named by the
...utenant.

...the other auctioneer, Mr. John Reilly, it did not
...om evidence before me that there was the same
... expressly communicated to him as there was to
... It appears that he has retired on a pension
... office of Water Bailiff, which he held under the
...uncil. Under these circumstances his case would
... be best met by treating him as entitled to retire,
...ding him a pension on the principles of the Ge-
...erannuation Act, 1859.

...ims of the late Mr. Bentley, as Deputy to the then
...nd Sword-bearer, in case of his removal were recog-
...the Municipal Corporation Reform Act of 1840.
...ot his son, who now holds the same offices, is some-
...rent. The father held his offices for the respective
...e then Marshal and Sword-bearer; the son's tenure

Evidence Appendix A, p. 51.

has lasted in one office since his father's death. the other since his brother's resignation, except time he resigned the office, with the view of obta reduction of the rent, he nevertheless technicall only from week to week.

Again, if the elder Mr. Bentley had been deprive office of deputy, whilst the monopoly of the o auctioneer was continued, he would at the same ti been deprived of all opportunity of carrying business, and would probably have lost a large par capital invested in it; whilst if the present Mr. was deprived of his appointment of deputy by th being thrown open, he would still have from his exp capital, and connexion, a chance of retaining a la of his business.

If any compensation were given in the case of M deputy, it appeared from the evidence before me t Farrell is the person really interested, and the per should be compensated. She, too, would probab the capital she has embarked in the business be retain a large part of it; her tenure is different f of Mr. Bentley, as she holds from year to year.

Mr. Garland's case more nearly resembles tha late Mr. Bentley, as he holds for Mr. Reilly's life he has been brought up to the business he woul to retain a large part of it, even if he was expos competition.

The compensation of the deputies should not i be measured by their entire income, which aris from capital employed in the business. To the ordinary interest on the capital they would have income if they withdrew altogether from busine

If, in addition to the abolition of the monop tioneers, freedom of contract were introduce auctions of articles pledged for small sums might extent be dispensed with, the income of the depu be more seriously affected, so that the amou claim would depend on the extent of the altera law.

...es from which Compensations might be provided.

... suggested that the Marshal, the Marshal's clerk, ... Sword-bearer could be provided for by the Town ... With regard to Mr. Gerald Gray and Mr. John ... fund for their compensation might be obtained ...ling for a gradual instead of an immediate aboli- ...e special tax on pawnbrokers, if it were decided ...r the charge for the support of the police upon ...roperty in Dublin. The claims of the assistant ...rs. Mr. Bentley, Mrs. Farrell, and Mr. Garland, ... defrayed from the same source.

...ecial tax now produces £5,000 a year, and a ...e reduction would—especially from the increased ...f pawnbrokers to which the reduction would give ... leave an ample margin for compensations. The ... be further reduced as the compensations expired, ...e finally abolished with the termination of the ...m.

...not, in dealing with these compensations, referred ...nual sum of £444 which Mr. Butler has received ...emoval from the office of Marshal in 1841, it is, ...other compensations under the Municipal Act, ...pon the funds of the Corporation; and I do not ...t the arrangement made by the Town Council ...is charge really paid out of the fees of the offices ...l and Sword-bearer is a sufficient reason for ...g any other fund for this compensation than that ...ch it is by law now charged.

...Regulations at present enforced in order to guard ... the reception of Stolen Goods by Pawnbrokers.

...sting pawnbroking regulations are defended by ...n admirable arrangement for tracing the person ...is stolen goods. Mr. John Byrne, Town Coun- ...he paper he submitted to me, strongly advocated ...uance of the existing system. At my request ...ted his books for examination, and it appears ...our weeks, at different periods of the year, in ...00 pawns a week were taken on an average, the

Appendix B, p. 92.

place of abode was given in less than 300 cases. in the case of 1,700 pawns a week no address was rec the express provisions of the Act of Parliament thus disregarded.

The letter of the Act of Parliament, as to the rec of the names of persons pledging, is so far complie that for every pledge a surname is entered; but it ap from an examination of Mr. Byrne's books of 18 taken as samples, that Christian names or even initi rarely if ever recorded.

The Police Commissioners have had ample oppor of enforcing this provision of the law if they thou essential, but it appears that the provision to whic attach chief importance is that which gives them th of prompt search; and I recommend that the po search without warrant, now exercised by detectives general authority from the Commissioners of Po confirmed to them by statute. I recommend, h that the same right of search be extended to store dealers, and to all persons who carry on the t purchasing second-hand goods.

21. *Detail Suggestions of the Dublin Metropolitan Commissioners.*

Appendix B, p. 98.

The Metropolitan Police Commissioners, in th munication to me, have alluded to a circumstanc should be attended to if the stamp duty of £10 be retained. At present persons commencing or ing to business have to pay the entire duty of £10 for the part of the year which intervenes from th of their taking out the licence till the 26th of M lowing, and they can get a part refunded only b rializing the Lords of the Treasury. The Comm recommend that such parties commencing busine be required to pay only a proportionate part of t duty, for each month prior to 26th March, and th parties die, or assign their property, or remove fro premises before the expiration of the year for w have paid full duty, the Commissioners of Police

ered to sanction a transfer of the licence for the rest
rear, on payment of a fee of £5.

Commissioners also call attention to the necessity
being enabled to complete the granting of licences
nbrokers, as they do in other cases, without the
re of the police magistrates. If licences be not
d this suggestion should, I think, be adopted.

The Office of Appraiser of Pawnbrokers' Pledges in Ireland.

Act of 1786 provided that outside the Dublin
Grand Juries should appoint persons to act as
ers and auctioneers of forfeited pledges. The ap-
thus appointed have a monopoly of the business.
re required to give security to the amount of £300,
obtain three sureties each in £100. The bonds are
dged with the Treasurer of the County or Town
the city or town in which such appraiser was
ed.

e obtained returns from the Secretaries of Grand
and from Treasurers of counties, in order that I
ee how far these provisions were complied with, and
nat in the following eleven counties no appraisers
en appointed according to the statute:—Donegal,
Fermanagh, Galway, Kildare, Kilkenny, Leitrim,
County, Tyrone, Waterford, Wicklow.

ne of the following counties none of the appraisers
dged bonds with the Treasurer. In the rest a few
ne so, while others have been appointed, and have
appraisers and auctioneers without fulfilling this
le obligation: Antrim, Armagh, Carlow, Clare,
Londonderry, Longford, Monaghan, Sligo, and
d.

e other counties, according to the returns which
eceived, appraisers have been appointed, but the
lo not state whether they have lodged the required
ith the Treasurer or not.

y four counties, viz., Cork, Louth, Roscommon, and

Tipperary, do the returns show a full compliance wit provisions of the statute, with regard to the appoint of appraisers and the lodgment of their bonds.

I recommend that the power of appointing appra in those counties in which it has not been exer hitherto should be taken away, and that in all counties the office of appraiser should continue on long as any existing appraisers in such counties con to hold office and to act in that capacity, and that in counties the power of the Grand Juries should be li to that of making temporary appointments to last until all existing appraisers shall cease to hold The Grand Juries might be enabled to accelerat abolition of the office of appraiser, by being all with the assent of the Privy Council, to compensa isting appraisers on their consenting to resign.

23. *Mode of giving Notice of Sales in Ireland outsid Dublin District.*

The Act of 1786 provides that where the place o dence of a person pawning shall not be known pawnbroker, the pawnbroker shall post or cause posted, the bill of appraisement in the market-plac the court-house nearest to the pawnbroker's pl business.

I recommend that this provision be abolished, a the English system of notice of sales without pub the names of parties pledging be adopted.

24. *Proceedings under the Commission.*

I have received information and assistance fr several parties to whom I applied in the course inquiry.

Mr. M'Evoy furnished me with his report on the and states that he has little to add to the statemen tained in it.

Appendix B, p. 92. Mr. John Byrne, Town Councillor, furnished me statement of his views on the subject.

...ved valuable information from Mr. Alfred Keeson ...on, author of an able treatise, which contrasts the ... pawnbroking in England, Ireland, and on the ...ent. The substance of his information he embodied ...tter. Mr. Keegan, the secretary of the United ... Association, when applied to for information, ob... in a letter which I annex, to the form of inquiry ... I did not hold the entire inquiry in public.

Appendix B, p. 111.

Ibid, p. 108.

...l complete notes taken of the information given by ...eral parties, and shorthand writers' notes of the evi... of those whom, as they had not made replies to my ...s in the first instance, I more formally summoned ...amined. I annex the notes to my report.

25. *Summary of Recommendations.*

...following is a summary of the recommendations I submit to your Excellency :—

...at the abolition of the Usury Laws be made com... being extended to contracts under the laws relating ...broking, and that the exception of such contracts ...ed in the 4th section of statute 17 & 18 Vic., c. 90, ...aled.

...at the provisions of the existing law as to the ... allowed on pawns be considered as regulating only ...plied contract between the parties, in all cases in ...here is no express contract.

...at the law be altered so as to allow companies, ...tive societies, and persons in partnership to carry ...usiness of pawnbroking in Ireland.

... the statutory restrictions as to the hours of ... on the business of pawnbroking be not entirely ...d, the trade in Ireland should be subject to no ... restriction than it is in Great Britain, and I recom... that the provisions of statute 9 & 10 Vic., c. 98, ...accordingly be extended to Ireland.

...at the exceptional oath required from pawnbrokers ...Dublin District by statute 28 Geo. III., c. 49 (Irish), ...ished.

6. That the provisions of statute 26 Geo. III., (Irish), and of statute 28 Geo. III., c. 49 (Irish), requ pawnbrokers in Ireland to give security should be repe

7. That the abolition of the special tax on pawnbr in the Dublin district should be regarded as a local tion between the poor people who pawn and the ov of rateable property in the Dublin Metropolitan Police trict, and that the relief of those upon whom the inci of this special tax falls should be sought in an exte to the rateable property in the Dublin Metropolitan District, of the proportion of contribution to the which has been established by Parliament in the citi towns of England and Scotland.

8. That the duties of pawnbrokers' auctioneer a the Swordbearer of the city of Dublin being incons the Swordbearer should not be one of the auctione forfeited pledges.

9. That the Town Council of Dublin should powered by statute to regulate the duties of the o Swordbearer, and to make provision for the salary office out of other funds than the profits arising fr sale of forfeited pledges.

10. That provision should be made for securing present Swordbearer his salary for his present duti that power should be given to the Town Council to annuate him.

11. That the office of Marshal should also be se from that of auctioneer of forfeited pledges.

12. That the Town Council should be empowe statute to regulate the duties which the Marshal is charge for the Town Council, and to make provi his salary from other sources than the profits arisi the sale of forfeited pledges.

13. That if the offices of auctioneers of forfeited are continued in the patronage of the Town Cou town funds should derive no pecuniary advanta the office, and that the salary should be fixed by t Lieutenant in Council, and the surplus, if any reduction of the fees charged on sales.

That the offices of the four statutable auctioneers sale of forfeited pledges in the Dublin district be ed, and the trade thrown open as in England.

If this recommendation be not adopted, and the f auctioneers of forfeited pledges continued, I am of that no one should be eligible for the office who been an auctioneer of seven years' standing; and one should be allowed to hold the office who does charge the duties in person.

That the periods for which the pawnbrokers are d to keep pledges previous to sale are, for a large pawns, too long; and that they are fixed on a principle, and should be repealed as compulsory ions.

That a period of three months for loans under 40*s.*, months for all loans above 40*s.* should be fixed mplied period for which pledges are to be kept in s where no other term was fixed by express con- I recommend, however, that in cases of loans of ewellery, and watches, the implied period should nded to nine months.

That the system of making the service of notices ory, now established in Dublin, be abolished.

That the provision of the English statute (39 & 40 I. cap. 99, s. 17) as to advertisements be extended nd, the absolute forfeiture being limited to pawns h a sum of 4*s.* only has been lent.

That the pawnbroker should be bound to give notice ies desiring it by registered letter, specifying the the place of sale, and that the pawnbroker have o charge for the cost of the letter.

That the pawnbrokers in Ireland be put on the same as those in Great Britain, and exempted from returns as to their business.

That stat. 26 Geo. III. (Irish) cap. 43, s. 41, which the obligation of making returns, and the payment of 1*s.* on each, be repealed.

That the Marshal's claim to compensation, in case ...es recommended be adopted, could be best met by

authorizing the Town Council to provide for his sa
£300 a year out of the funds at the disposal of the
Council, and to attach new duties to the office.

24. That the Marshal's clerk, Mr. Beahan, could,
the duties discharged by him became no longer nec
be provided for in like manner, by his being attach
supernumerary to one of the offices under the Town
until a vacancy occurred.

25. That if the office of pawnbrokers' auction
abolished, Mr. Gerald Gray might be compensa
allowing him the amount of his present salary u
terms of his performing appropriate public dutie
the Town Council, or in some official department in
named by the Lord Lieutenant.

26. That, in the like event, Mr. John Reilly's cas
probably be best met by treating him as entitled t
and awarding him a pension, on the principles
General Superannuation Act, 1859.

27. That the deputy auctioneers, Mr. Bentle
Farrell, and Mr. Garland have claims for comp
that should be considered, the amount of which
depend upon the extent of the alterations made in
of pawnbroking.

28. That, if it is decided to transfer the charg
support of the police, now defrayed by the specia
pawnbrokers, to rateable property in Dublin, the
sation to Mr. Gray, Mr. Reilly, and the deputy au
might be provided for by the gradual instead
immediate abolition of the tax.

29. That the power of searching pawnbroke
without warrant, now exercised by detective
general authority from the Commissioners of
confirmed to them by statute, and be extende
shops of marine store dealers, and of all persons
on the trade of purchasing second-hand goods.

30. That if the special tax on pawnbrokers i
be not abolished, the detail suggestions of the Po
missioners for the remedy of the defects in its i
be adopted.

That the power of appointing appraisers of forfeited
s should be taken away from Grand Juries in those
es where the power has not been exercised, and
be terminated in other counties on the death or
ation of the present appraisers.

I have the honour to be

Your Excellency's faithful servant,

W. NEILSON HANCOCK.

February, 1868.

APPENDIX A.

INUTES OF EVIDENCE.

Office of the Commission, Four Courts, Dublin,
April 15, 1867.

MARTIN CREAN, Marshal of the City of Dublin, examined.

Mr. Martin Crean, Marshal.

awnbrokers are carrying on business without giving security ven in Galway alone). The only method of putting a stop to the Marshal to summon them before the Local Magistrates. nbrokers have got no licences from me. They have paid the to the Excise, and in that case they enter into no bonds. In the Dublin there is no County Treasurer to receive the bonds, and ury of the Grand Jury has refused to do so; so that none of the ers in the County of Dublin are properly licensed or bound by I account to the Corporation for the fees received. My salary er annum, and I am allowed for the expenses of my office. I clerks, one receives £80 per annum, and the other two £1 per ey are chiefly engaged in filling up and serving notices of sale, ying the monthly returns of pawnbrokers.

ner Marshal, Mr. John Judkin Butler, receives £444 per annum ion, out of the funds received in the Marshal's office. The total ed is about £1,000 or £1,200 a year. I account for the surplus aid into the Borough fund. I account to the Corporation every

Marshal, Mr. Thomas Reynolds, took a legal opinion from Mr. as to whether the Corporation was entitled to any part of the ved in the Marshal's office out of the trade of pawnbroking. Mr. was of opinion that they were not entitled, and the executors of arshal are threatening to sue for money paid.

no practical way of enforcing securities at present. I am of at many pawnbrokers have not entered into securities, from cured a list from the Excise Office of those who had there paid nd then compared it with my own list of those whose certificates istered. I intend to write to the officers of Excise, that they take fees unless they produce my licence. The Inland Revenue £50 for each licence. There has been neglect as to securities for

awnbrokers refuse to render monthly returns. There is a forty shillings due for not rendering them; no steps have been nforce it.

Grand Juries should appoint appraisers, but they do not, and ers in the country sell the goods as they like.

's returns to Parliament are regularly made out and sent to Secretary's Office. These abstracts always notice those pawn- o are deficient.

MINUTES OF EVIDENCE.

Mr. Martin Crean, Marshal.

The monthly returns are sent in irregularly by pawnbrok... send in returns for twelve months at the same time, and it ... seldom possible to have the Parliamentary abstract ready f... week of the session. I think these Parliamentary returns are ... less, and the only object of the monthly returns by pawnbr... enable the Marshal to furnish this Parliamentary abstract.

The Dublin pawnbrokers are very regular in sending in n... turns, but I do not see how these act as a check, and I do not r... their continuance.

The notices of sale are peculiar to Dublin; my clerks serve the... I have reason to think that Dublin pawnbrokers sell goods with... given owners notice of intention to sell. From a comparison of ... ber of notices sent out by some pawnbrokers who do a large ... with the number sent by others, I am convinced that they do ... sufficient number of notices. Constant complaints are made to the ... office on this subject. The difference, however, in the number ... might arise from the circumstance of one pawnbroker only lendi... customers, who will certainly redeem, while another may carry ... precarious business; his customers may be poorer, and he may ... be obliged to sell more frequently.

There are no notices of sale in the County of Dublin, or o... Circular-road. Frequent complaints are made. Notices are he... the poor, who on receipt make an effort to redeem their goods ... pay before the sale, they are charged with the price of the noti...

There have been no complaints of pawnbrokers selling othe... in public salerooms. There are now pawnbrokers' private sale... I suppose that the pawnbrokers buy at divisional sales.

I do not act as auctioneer myself. I have an assistant or d... Bentley), who has entered into securities to me. There are fou... salerooms, viz.:—Capel-street, Wood-quay, Church-street, Merch... Pawnbrokers may send goods to any one of the four. Mr. Ben... deputy auctioneer to the Sword-bearer; he pays £6 a week to ... office. This is accounted for to the Corporation by me. Mr. B... pays the rent of the salerooms; Mr. Bentley receives the au... Mr. Bentley makes about £1,000 or £1,100 a year. The risk ... is great, for he must give credit to the brokers who attend t... the amount of £20 or £30, who pay him as they sell the goods ... he must be accountable to the pawnbrokers for whom he is selli... them the full price.

The public don't attend these sales. The buyers are broker... would not permit a stranger to buy. At these sales separat... goods are sold at certain fixed hours, and so buyers of diffe... attend.

The deputy auctioneer (Mr. Bentley) employs licensed auc... work for him, who are not known public officers. Practic... nothing whatever to do with the auctions. My deputy's se... private to myself, and approved merely by me, and are for the ... indemnifying me and my securities.

Under the old Corporation the Marshal had a salary, and ... fees besides, of which he made no return to the Corporation ... to pay Mr. Butler's compensation the Corporation agreed w... cessor (Mr. Reynolds) that he should pay in the fees to them.

The Sword-bearer has the same deputy as I have. Mr. Ge... one of the auctioneers appointed by Government. He also h... (Mrs. Farrell) from whom he receives £5 per week. Mr. Gray ... nothing whatever to do: Mr. John Reilly is the other auctione... by Government. He was appointed two years ago. He rece...

Mr. Martin Crean, Marshal.

...n his deputy. There are six hundred pawnbrokers in ... three in Dublin. Auctioneers' returns of sales are regu... In 1865 the amount of property sold in the four sale... the value of £80,049. The amount of money lent in 1865, ... in Dublin alone, was £750,000. Three million three ... pawnbrokers' tickets were issued in Dublin in 1865. ... 1*d.* for every ticket for goods under 10*s.*, 2*d.* a ticket ... 1*s.*, and 4*d.* for every ticket where sums above 20*s.* have ... penny a ticket is charged for any sum lent, however small. ... for a sum of 4*s.* lent is 1*d.* a month; for sums over 4*s.* it ... pawnbrokers, in order to charge the larger interest, add ... for the ticket to the original loan of 4*s.*, and require interest ... If a person pledges an article on the last day of one ... releases it on the 3rd or 4th of the following month, he ... article has only been a few days in pawn) is compelled ... broker to pay interest for the two months. Pawnbrokers ... all articles of the same kind in bundles, although they belong ... persons; they cannot, therefore, account to the owner, as may ... required at any time within three years after sale, or pay to ... plus there may have been.

Office of the Commission, Four Courts, Dublin,
16th April, 1867.

THOMAS ARKINS, Sword-bearer of the City of Dublin, examined.

Mr. Thomas Arkins, Sword-bearer.

... other emoluments except those arising from my post as ... in connexion with the trade of pawnbroking. The former ... had £100 a year as clerk of the corn table, and £100 as ... I attend to the corn table without any special remunera... ... £100 a year; this emolument is nominally for my duties as ... but I have really nothing whatever to do as auctioneer; my ... attend the Lord Mayor, and meetings of Corporation, and to ... the Lord Mayor's charities. I am bound by an oath to devote ... me to the Lord Mayor and Corporation. My predecessors, for ... years, were Mr. Middleton, Sir James Riddell, and Mr. Finley, ... 1842, since which time I have held the office. By 28 Geo. ... c. 18, I am bound, as auctioneer, to keep accounts of goods ... pawnbrokers and make returns to Registrar (Marshal), but my ... Bentley, performs this duty. All the divisional salerooms are ... make returns to Marshal.

Office of the Commission, Four Courts, Dublin,
17th April, 1867.

JOHN BENTLEY, Deputy Divisional Auctioneer, examined.

Mr. John Bentley, Deputy Divisional Auctioneer.

...ty or assistant to the Sword-bearer and to the Marshal. I ... deputy to the Marshal in 1851. My father held office as ... Marshal and Sword-bearer. On my father's death I got the ... in Wood-quay (Marshal's) auction-room, and my brother, ... Bentley, got Capel-street saleroom. After he retired I ... for Capel-street saleroom to the Corporation, which I found ... charge. I therefore surrendered it in July, 1866. The Cor... ...rtised for a deputy for Capel-street saleroom but none was ... in November, 1866, I offered them £5 a week for the office, ... accepted, and I was appointed on 16th November, 1866. I

MINUTES OF EVIDENCE.

Mr. John Bentley, Deputy Divisional Auctioneer.

gave three bonds of £300 each to Mr. Arkins, who on his p into security to the Corporation. The Marshal and Sword-bea the names of their deputies to the Corporation, with the sums the Corporation approve.

Neither the Marshal nor the Sword-bearer ever acted as auct paid licence duty as such. It is not necessary to pay licence d actually sells as an auctioneer. He may carry on business deputy without paying licence. The licence fee is £10 for any I employ three assistants and pay licence fees for them. I myself. I have been a licensed auctioneer. My three assist Capel-street and Wood-quay salerooms, one permanently at and one shifting as business requires. There are two or thr each day. Different classes of goods are sold at different hour

For example, in Capel-street, there is an auction of wearing a eleven till one o'clock ; an auction of shoes at two o'clock : a wearing apparel at four o'clock ; an auction of books or jewell o'clock.

In Wood-quay room there is an auction of wearing app o'clock and at six o'clock only. Brokers attend these auctio may sometimes sell goods directly to brokers instead of ple but very seldom. I think they get more by pledging. The sell on credit to brokers. This creates a better market, for br not buy if they had to pay at once. Few of them could co business if they had to do so, for they have no capital. It is a pawnbrokers, for a better price is obtained. All auctioneers for thus they get a higher commission in consequence of the The emoluments of auctioneers are 1*d.* in the shilling, or 1*s.* under 20*s.*; at and over 20*s.*, 1*s.* 4*d.* in the pound ; at and ov the pound. All other auctioneers—that is, those not appoin pawnbrokers—get for similar sales 10 per cent., *i.e.*, 4*d.* in th than those in divisional salerooms. I pay all expenses of room mission averages between 1*s.* 6*d.* and 1*s.* 7*d.* in the pound. Paw sue the Marshal or Sword-bearer for sums due from the deputy they fail to pay them. Eight years ago Mr. Michael Clarke, a d C. Farrell, one of the Government auctioneers, absconded, ov Pawnbrokers sued his principal, and recovered some hundr I have no other business except that of auctioneer, nor have I do not permit them to sell anything on their own account.

Technically the Sword-bearer should furnish accounts t however, perform this duty, and furnish accounts in my the Marshal as registrar. I fulfil in every respect the duti the Act of Parliament, are imposed on Sword-bearer as auc present system is merely a mode of paying the Marshal a for their other duties.

As to the salerooms of the Government auctioneers, Mr. G appointed three years ago, on the death of Mr. C. Farrell had been appointed about 1850. He had previously been auctioneer. He let the rooms to Mr. Michael Clarke, w After this, Mr. Farrell carried on the business himself. I at it. When he died Mr. Gray was appointed. Mr. Gra himself. He lets it to Mr. Fitzgerald in trust for Mrs. F the real deputy. Mr. Fitzgerald is an assistant of hers, a used to get over the difficulty of having a female deputy au however, advertises and carries on the business in her own

The four city divisions referred to in the Pawnbrokers originally used for magisterial and police purposes. Sale tuted in each of these divisions, but pawnbrokers may sell

... Burke held the Workhouse Divisional Saleroom for forty ... years he carried on the business himself, and he ... other fifteen years. He died two years ago, and Mr. ... was appointed. He took out a licence, and sold the first few ... He had let it to Mr. Edward Garland before he did so ... There are no catalogues at these sales; the articles are ... Owners never come to auctions to buy their ... having received notice of their intended sale. Notices ... The owners sometimes procure the name and address ... and then buy the goods. They are always satisfied with the ... account as to price, &c. Such inquiries, however, are not ... as once a day. Buying an article from the broker who has ... the sale, often gives it to the owner cheaper than if he had ... from the pawnbroker. The pawnbroker is bound to give an ... pledged goods for three years, and to give the surplus price ... the sale to the owner. According to the sum lent, the pawn- ... the article for six, nine, or twelve months. He labours under a ... for if he has lent less than the price at which the article is sold, ... to refund it, while generally the price does not cover the sum ... accumulated interest. It is not, therefore, the pawnbroker's ... sell; better to keep it in the hope of its being redeemed. It is ... that the pawnbroker gets his profit chiefly. I do not sell articles ... bundles, for the pawnbrokers prefer it otherwise, as they get ... for things sold separately. I never sell in bundles things ... different people. Pawnbrokers, as a rule, do not sell goods ... of business; if they do they must buy them in at the public ... They frequently withdraw goods from auction if the price is ... enough, but they won't bring them out again to auction. In ... keep goods for twelve months, and then sell them without ... In England auctioneers do not give credit to brokers at ... therefore have not a good market for small goods. They sell ... goods in lots. Pawnbrokers in Ireland generally keep goods ... is necessary, in hope of their being redeemed. I think that ... good for keeping small goods are too long, viz., six, nine, ... months. The sales would be better, and thus the public would ... if the period were not so long. Goods become unfashionable, ... value is depreciated by being kept. Pawnbrokers keep ... long enough out of compliment to their customers, under the ... competition. I would suggest that the period of three months ... keeping small goods on which sums under 10s. have been ... months for goods under 40s.; and nine months for goods over ... Great competition between the salerooms is chiefly in the length ... of credit. The longer the credit the higher the prices obtained from ... and the higher the prices the more business done; for pawn- ... send their goods to the auctioneers who get the highest price ... My success is chiefly the result of my knowing the persons to ... safely give credit. There is not sufficient business for four ... Pawnbrokers have not increased in number in Dublin. The ... of £100 (Irish) limits the number of pawnbrokers, and there- ... business of auctioneers is limited. There has been a succession of ... amongst the divisional auctioneers. Mr. Burke, of the ... Saleroom, set the business to Mr. Clarke. Clarke became bank- ... to about £1,000 a year. Mr. Burke then set it to Mr. Patrick ... He also became bankrupt. Then he set it to Young and Groves, ... Mr. Burke died, and Mr. John Reilly was appointed, and ... room to Mr. Garland. Mr. John Byrne, who held the Barrack ... failed. Then Mr. Michael Clarke held this along with the

MINUTES OF EVIDENCE.

Mr. John Bentley, Deputy Divisional Auctioneer.

other office. He had been originally appointed to this, and ad
obtained the Wood-house saleroom also. Then Mr. C. Farrell
lost heavily. Mr. Gerald Gray is auctioneer at present. His
Mrs. Farrell. The number of pawnbrokers in Dublin is always
forty-eight and fifty-two, never more in consequence of the £2
fee. The fee keeps the trade respectable. If pawnbrokers' in
distributed through all the auction rooms in Dublin, it would
trifling addition to the business of each. The higher the rate
the better for the public, for thus they get a higher advance.
who do not intend to redeem, a high rate would thus be an ab
and to those who redeem it would be a trifling burden. Anyo
pawnbroker (since the usury laws were abolished) if he does not
£10. Pawnbrokers do not issue tickets for loans over £10. They
ever, by breaking a large amount into small sums of £9. Some
sums, but these are outside the trade of pawnbroking. Pawn
not like to receive suspicious articles, for they must keep them
and if discovered must give them up without payment. This
ship on pawnbrokers, for they may often be deceived.

Mr. JOHN BENTLEY further examined, 29th April, 18

I am deputy both to Marshal and Sword-bearer. I was
deputy to Marshal in 1851. I applied for the post on my fa
The rent was raised £1 each when I took the salerooms, as
and Sword-bearer were anxious to make the rooms as profitabl
to the Corporation. I proposed to take Wood-quay rooms at
My brother applied for Capel-street rooms, and offered
Michael Clarke had already offered £10 a week for Capel-st
my brother thought that there would be no use in offering
previously obtained, and therefore offered £8. We knew
that Clarke made this offer that he was bankrupt, and that
much merely through recklessness. He was not, therefore,
petitor. When my brother resigned the rooms I offered
sought a reduction of the rent, and offered £5 a week for ea
the sum my father paid. I got an answer from the Corporat
I was informed that I had been approved of as auctione
my application for reduction of rent had been referred to C
3. This Committee did recommend a reduction, but not th
applied for. When their report to this effect was submitted t
it was rejected by a majority of one. This was chiefly th
ertions of Mr. John Reilly, who canvassed the members
against me. Mr. Reilly had previously asked me to becom
and thought that I would accept his offer if the Corporation
duce my rent. I did offer to become his tenant after the
Council, but he had already engaged Mr. Garland, an assist
a rent of £4 a week. After this vote of the Council I re
street rooms. The Corporation advertised for an auctioneer, h
one, and I then offered to take the saleroom at a rent of £
was appointed at that rate on 16th November, 1866. I ha
street rooms at a rent of £5 a week, and Wood-quay rooms
I was a candidate against Mr. Reilly for the Government
He succeeded, and about two months after asked me to do
him, and become his deputy. I do not know whether he
appointed Mr. Garland at the time of the division in the C

Documents handed in by Mr John Bentley.

...ation, dated July, 1865, of Mr. JOHN BENTLEY for the appointment of Divisional Auctioneer:—

...gned, having learned that Mr. John Bentley, of Grafton-... quay, is seeking for the appointment of Divisional Auctioneer ... Dublin, beg leave to say that from his great experience in the ... brokers' auctioneer and high commercial reputation, he is, in ... especially qualified to discharge the duties of the office with in... zeal, and that the interests of the public will be, as we believe they ... been, safe in his hands, if favoured with the appointment:—

Charles White, Woodlands.
John. P. Vereker, ex-Lord Mayor of Dublin.
Bevan, Low, Murray and Co., College-green, Dublin.
G. F. Hardy, Manager National Bank.
Pim, Brothers, and Co., South Great George's-street.
Charles Leslie, Bride-street.
John D. Fottrell, Secretary Hiberniau Bank.
Guinness, Mahon, and Co., 17, College-green, Dublin.
Smyth and Du Bedat, 11, College-green.
Edward Fox, 51, Dame-street, Dublin.
Jonathan Pim, 22, William-street.
James Wm. Mackey, 40, Westmoreland-street.
West and Son, 18, College-green, Dublin.
J. North, Royal Bank of Ireland.
David Fitzgerald, 20, St. Andrew-street.
J. Bernard Burke, Ulster, 55, Pembroke-road.
Francis Codd, 7, Fleet-street.
Benjamin Lee Guinness, James's-gate.

...y of MEMORIAL, dated October, 1865, of Mr. JOHN BENTLEY to ...ncil, City of Dublin, praying Reduction of Weekly Rents of Salerooms:—

...ight Honorable the Lord Mayor, Aldermen, and Town Councillors ... City of Dublin.

...orial of John Bentley, of 161, Capel-street, and 12, Wood-quay, in ...ty of Dublin, Divisional Auctioneer,

SHOWETH,

...is father, the late William Frederick Bentley, for many years and up ... of his decease, held the offices of Deputy to the various Marshals ...bearers of the City of Dublin, for the sale by auction of Pawn... forfeited pledges.

... the 20th section of 3rd and 4th Victoria, chap. 168, it was enacted ... deputy should not be removed from said offices, unless upon cer... of compensation as therein provided.

... said William Frederick Bentley paid to the Corporation of Dub... said appointments the sum of £5 0s. 0d. per week, in addition to ...nts and all other expenses connected with the business.

... some few years previous to the death of his father, memorialist ...him as partner in said business.

...mediately upon the death of the late William Frederick Bentley, ... and his brother, Mr. William W. Bentley, were severally ap... the offices thereby rendered vacant—Mr. W. Bentley to the Rotundo ...8s per week, and memorialist to the Stephen's-green division at £6 ...g payments largely in excess of the prices ever previously or since ... appointments by anyone who remained solvent.

... the time of said appointments of your memorialist and his ... up to the month of July, 1861, they carried on the business ...pointments together as partners, at which latter date said partner-

MINUTES OF EVIDENCE.

Documents handed in by Mr. John Bentley.

ship having been dissolved by mutual consent, and the interest of the said liam W. Bentley in said business having been conveyed to memorialist, tinued to carry on same up to the present time upon his own account.

"That memorialist has personally conducted the business of said two blishments for a period of over eighteen years, and in a manner which mits has given entire satisfaction to all parties interested.

"That memorialist's brother having made a formal resignation of the ment of the Rotundo Divisional Saleroom in his memorialist's favour, seeks to have same sanctioned by the Town Council.

"That memorialist has ever felt that the respective rents of £8 and £ excessive, and higher than could be reasonably expected to be obtain any solvent person, and he has from this time repeatedly complained Sword-bearer and Marshal of same, as being above the usual letting any of the Divisional Salerooms, the Barrack Division being now le per week, and the Workhouse Division (having been for the last 20 ye quently unlet) being now on offer upon the same terms.

"And your memorialist therefore respectfully prays,

"That your Lordship and the Council may be pleased to sanction pointment of memorialist to the Rotundo Divisional Saleroom instead William W. Bentley, and also to sanction the reduction of the prese ments to £5 per week for each of said appointments, as being their fair value.

"And memorialist will ever pray."

3.—COPY of LETTER from W. J. HENRY, esq., Town Clerk of the Dublin, sanctioning the appointment of Mr. JOHN BENTLEY to th of Deputy Divisional Auctioneer.

City Hall, Town Clerk's Office
Dublin, 4th October,

SIR,

Referring to your memorial to the Council, praying its sanction to y pointment as auctioneer to the Rotundo divisional saleroom, and a redu your rent, I have to inform you that the Council at their meeting on last, sanctioned your appointment as Auctioneer to the Rotundo divisio room, instead of Mr. William W. Bentley, and have referred the qu reduction of your rent to Committee No. 3, for report.

I am, sir, your obedient servant,

(Signed) W. J. HENRY, Town

JOHN BENTLEY, esq., Capel street.

4.—COPY of LETTER from W. J. HENRY, esq., Marshal of the City of appointing Mr. JOHN BENTLEY, to be his Assistant Auctioneer for of forfeited pledges.

City Hall, Town Clerk's Offic
Dublin, 26th January,

DEAR SIR,

I beg to inform you that I have been this day appointed by the Co to discharge the various duties of Marshal of the City of Dublin, an pursuance thereof I hereby appoint you as assistant auctioneer for th forfeited pledges, upon the terms and conditions already existing between the late Marshal, and the Corporation.

I am, dear sir, yours faithfully,

(Signed) W. J.

JOHN W. BENTLEY, esq., Capel-street.

of LETTER from Mr. MARTIN CREAN to Mr. JOHN BENTLEY, appointn Deputy Auctioneer for the sale of forfeited pledges in Dublin.

Documents handed in by Mr. John Bentley.

City Hall, Marshal's Office,
Dublin, 23rd March, 1866.

by appoint you my deputy, as auctioneer for the sale of pawnbrokers' ledges, in the Stephen's-green divisional saleroom, in the City of Dublin, g the same rent as heretofore for said room, six pounds sterling per

l be good enough to furnish me with the required security, and statu- satisfactory for the faithful discharge of the duties as such deputy.

I am, sir, your obedient servant,
(Signed) MARTIN CREAN,

Marshal of Dublin, and Registrar of
Pawnbrokers for Ireland.

ENTLEY, esq., 161, Capel-street.

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of ADVERTISEMENT in *Saunders's News-Letter*, of 24th July, 1866, sons willing to become Deputy of Sword-bearer, for the sale by of forfeited pledges.

Rotundo Divison.

mas Arkins, Sword-bearer of the City of Dublin, will receive pro- n persons willing to become his deputy for the sale by auction of ledges, in the Rotundo division of said City of Dublin.

pplications will be received up to Friday, the 3rd August next, ad-

Mr. THOMAS ARKINS,
2, Finea-terrace, Aughrim-street.

d, 1866.

---

of APPOINTMENT dated 16th November, 1866, by Mr. THOMAS , to Mr. JOHN BENTLEY, as Deputy Auctioneer of Rotundo al saleroom.

l men by these presents that I, Thomas Arkins, of Finea-terrace, in Dublin, Sword-bearer to the Right Honorable the Lord Mayor of Dublin, and acting as Sword-bearer of the City of Dublin, pursuant 8 Geo. III., Chapter 49, do hereby appoint you, John Bentley, of ont-quay, in said City of Dublin, auctioneer, to be and act as my tioneer within the Rotundo divisional district in said city, for the ion of all goods and articles pledged or pawned, in the metropolitan he City of Dublin, or within three miles thereof, which have been or e forfeited during my tenure of said office of Sword-bearer, and de- you for sale by auction, and I make this appointment upon the con- you, the said John Bentley, shall well and truly sell by auction Rotundo divisional district, all such forfeited pledges as shall be de- on for that purpose, and well and truly pay to all pawnbrokers who h forfeited pledges for sale, the full proceeds of such sales by auction, therefrom only the rates of commission legally chargeable upon and that in lieu of paying over such fees to me, you are to pay me ve pounds sterling, without any deduction, on every Monday, so long ntment shall subsist, the first payment thereof to be made on Monday h of November, 1866, and upon this further condition, that you shall ab mnify me, my executors, administrators, and assigns, by your own in the sum of £923 1s. 8d. and by the several bonds of Francis Byrne, of [illegible], gentleman, James Redmond, of No. 118, Abbey-street, and Michael Boyle, of No. 13, Phœnix-street, pawnbroker, each in £276 15s. 6d. sterling, from and against all claims demanded, and

MINUTES OF EVIDENCE.

Documents handed in by Mr. John Bentley.

liabilities whatsoever to arise or result from this appointment, and ... further condition, that this appointment shall be determined or ended ... of us giving one week's written notice to the other of such intention, su... to be signed by the person giving same, and delivered at the residen... described, or last known residence of the person to whom such notice ... addressed. In witness whereof I, the said Thomas Arkins, have hereu... scribed my name and affixed my seal this 16th day of November, 1866.

(Signed) THOMAS ARKINS. (S...

Signed, sealed, and delivered in the presence
of FRANCIS MORGAN, Solicitor,
35, Dawson-street, Dublin.

8.—COPY of LETTER from Mr. JOHN BENTLEY to Mr. MARTIN CREAN, ... conditional surrender of the Stephen's-green Divisional Salero...

Dublin, 161, Capel-street,
November 16th, 1...

MARTIN CREAN, esq., Marshal,

DEAR SIR,

Feeling that I am overcharged for my appointment under you as div... auctioneer, and having some short time ago been refused any reduction ... Town Council, I beg to tender you my resignation of the office, which I s... prepared to surrender on Wednesday, the 28th November instant, unless ... the meanwhile I shall hear from you that the Town Council would be wi... accept the reduced rent of four pounds a week, instead of six pounds, w... have been so long paying, but always under the feeling (frequently expr... that such payment was in excess of the fair value of the appointment.

The Council however thought differently, and rejected my application b... jority of one. They have since however had further evidence that these a... ments are not so valuable as they were led to suppose, and they may theref... themselves at liberty now to grant a reduction which would have before a... excessive. I may observe that the sum now offered is £1 a week less th... proposed in my former application, and for this reason that extra com... has since sprung up, which will of necessity greatly reduce the amount o... to be disposed of in the Stephen's-green division.

Thanking the Council and you for the confidence from time to time ... in me,

I beg to remain, your faithful servant,
(Signed) JOHN BEN...

9.—COPY of LETTER from Mr. JOHN BENTLEY to Mr. MARTIN ... objecting to give more than £4 per week for Stephen's-green Di... Saleroom.

Dublin, 161, Capel-street,
December 13th, ...

MARTIN CREAN, esq.

DEAR SIR,

I beg to acknowledge receipt of your favour of this day, enclosing ... of a Resolution of the Town Council, stating the Committee would not ... your letting me the Wood-quay saleroom at five pounds per week, and re... this resolution as a rejection of my proposal of the 16th November las... sume you are prepared to accept my resignation of the office, if so, I ... ready to surrender the appointment, and discontinue the sales in that ... on Wednesday next, as I could not think of increasing the weekly pa... four pounds mentioned in my former proposal.

I enclose you a cheque for thirty pounds, which will settle up to W... next, the 19th instant. Kindly let me hear from you saying you will ... pared to accept surrender on that day or otherwise, that I may make ... ments accordingly.

Yours faithfully,
(Signed) JOHN BE...

Document handed in by Mr John Bentley.

...ments of Gross Commission received on sales at the Stephen's-green and the Rotundo Divisional Salerooms.

...ng gross commission of the business of pawnbrokers' auctioneer, ... by Mr. John Bentley, at the Stephen's-green Divisional Salerooom, ... ay, in the City of Dublin, for five years, commencing 1st ... and ending 31st December, 1866

	Gross Commission.		
	£	*s.*	*d.*
1862,	1,437	19	1
1863,	1,699	13	1
1864,	1,995	13	3
1865,	2,080	5	2
1866,	1,684	9	1
	8,897	19	8

...ent shewing the gross commission received on sales at the Rotundo ...al Saleroom by Mr. John Bentley, from the date of his appointment in ...er, 1865, to 31st December, 1866.

	£	*s.*	*d.*
For quarter ending 31st December, 1865,	651	3	2
For year ending 31st December, 1866.	19,110	12	1

(Signed), JOHN BENTLEY,
January 31, 1868.

Office of the Commission, Four Courts, Dublin,
25th April, 1867.

Mr. FRANCIS BYRNE, Pawnbroker, examined.

Mr. Francis Byrne, Pawnbroker.

...ve been in business on my own account since 1843. I am at pre... carrying on business in James's-street. My son is a pawnbroker in ...53, 56, Great Britain-street. These tables will give an idea of the ...ss done in the two houses. (See tables, pp. 30, 31.)

...England all goods on which sums under 10*s.* have been lent, are ...d after twelve months, and may be kept by pawnbroker. In ...l goods must be auctioned.

...average sums lent are between 3*s.* and 4*s.* In 1843 Messrs. Smith ...ey-General) and Hamilton made a move to assimilate the Irish to ...gish pawnbroking laws. They were shown, however, that the Irish ...ere more beneficial to the public; that while in England all goods ...ch sums under 10*s.* are lent are forfeited after twelve months, ...then sold, and any surplus price obtained, the pawnbroker gets the ... which it is not necessary that any account should be kept. ...and the owner can claim at any time within three years, and pawn... are bound to give an account.

...843 Government wanted to introduce ½*d.* tickets, as in England. ...we lost this year on every sale. The trade is greatly affected by ...neral condition of the country. In the year of O'Connell's election ...£400 by sales. The better trade is the more profit there is in pawn... For if trade is depressed the poor bring articles to pledge, but ...annot redeem them, and they are quickly sold, rarely at an advan... the pawnbroker. But if trade be good the same articles are again ...ain pledged and redeemed, and it is by these redemptions that ...rokers make their profits.

...hours appointed by law are not strictly adhered to. The sta... hours are from 10 o'clock to 4 o'clock in winter, and from 10 o'clock

INUTES OF IDENCE.

. Francis Byrne, Pawnbroker.

to seven o'clock in summer. But pawnbrokers keep their houses from 8½ o'clock, A.M., to 7 o'clock, P.M., all the year. Originally the tion was that from 10 o'clock to 12 o'clock, P.M., on Saturday nights be devoted exclusively to the business of releasing articles, but found that this could not be adhered to. Persons would come to articles and instead of releasing by paying the money due, would by offering another article in pledge in its place.

After the institution of the metropolitan police an effort was confine the pawnbrokers strictly to legal hours. Immediately, low numbers of "dolly shops" sprang into existence, and the rule had relaxed. The Commissioners of Police said, "We cannot authorize to keep your houses open, but the police officers shall not interfere if you This compromise puts pawnbrokers greatly under control of the p

I do not think that the low rate of licence fee in England* (£15 vents the trade from being kept in the hands of respectable men. T are in London 500 or 600 pawnbrokers. I think that, in proportion t population, the number of pawnbrokers in London is double that in Lo In Dublin (including Kingstown) there are fifty-one.

In London all goods on which sums over 10s. have been lent mu catalogued, and sold according to catalogue. Any surplus obtained o goods must be given to the owner if applied for.

In Dublin pawnbrokers must keep an account of all goods, no m of how small value. In the returns I have handed in I have state proportion of goods sold in this year. It is very seldom that a su exists to give the owner. Of the £36 (see table, p. 30) gross pro sales, the remainder, after deducting interest, would be due to own they applied for it.

The competition among pawnbrokers is the true protection to the It makes them give the highest possible loans on pawns.

During the last two years there has been an overplus on sales frequently than is usually the case. The reason of this has been the prices of woollen goods. The sale of these articles has been good.

Legally the owner can bring an action against a pawnbroker f surplus price due to him; on the other hand, if the owner does not r and if the goods, when sold, do not realize the sum lent and the in the pawnbroker can legally recover the difference from the owner goods. This never happens as it would ruin the pawnbroker. Acc to strict law the owner must first pay the principal and interest, an there is an investigation as to the price obtained at the sale, a difference is made up by one party or the other. The public, ho by inquiring at the office of auctioneer, can discover the amount r at sale previous to application at pawnbrokers, and thus save the from any risk.

The object of the sale by auction, is to secure a fair public sale. whichever party loses by the sale can recover from the other.

In England there are no officially appointed auctioneers, each broker may appoint his own. The business, however, naturally fall few hands. Those who are pawnbrokers' auctioneers must kn business thoroughly, for it is peculiar in requiring auctioneers to credit to brokers. In England they do not sell on credit.

I have generally employed Mr. Bentley as my auctioneer. I got better prices with him than with others. Bentley formerly di business than any of the others. He resigned Capel-street salero was the dearest. The Corporation, however, were unwilling should hold one without the other also. Having advertised for

* £15 in London District, £7 10s. elsewhere in England.

...er in vain, they allowed him to take back Capel-street saleroom ... rent. The agreement was made in regular legal form, by legal ... between the Corporation committee and Mr. Bentley.

... Mr. Joynt became Lord Mayor, however, there has been a move- ... overthrow this agreement, on the ground that the council had not ... the Committee to make it, and that the room should bring a ... rent, and that Mr. Bentley should not hold Wood-quay room unless ... Capel-street room also.

... advertisements of the Corporation appeared in the months of Sep- ... and October, 1865.

... Bentley were forced out of his office now he would be ruined, as ... be impossible for him to get his money from the brokers.

... Marshal and Sword-bearer always sold by deputy. I am one of the ... to the Sword-bearer. The rent of the salerooms has gradually ... Forty years ago not more than £2 a week was given. Twenty ... go Sir J. Riddell was Government Auctioneer in Barrack Divisional ... Mr. M'Namara was his deputy.

... Dodd, of Sackville-street, succeeded Riddell. His deputy was Mr. ... who was not a sober man, and got into difficulties in consequence ... living. He owed money to me, which he delayed to pay. I told ... would apply to his principal (Dodd), which I did, threatening to ... his sureties. The money was at once paid. Michael Clarke was ... deputy to Dodd, but he failed.

... Dodd. Farrell held the appointment. He sold goods himself. He ... ceeded by Mr. Gerald Gray, who never sold. Mrs. Farrell is his ...

... Workhouse saleroom is on Merchants'-quay. Rodolphus Burke was ... ver forty years ago. M'Nevin was his deputy. He failed. Then ... and Groves were deputies. They died, but I never heard that they ... bankrupt. On Burke's death, Mr. John Reilly, barrister, was ... ed auctioneer; he also held the office of water-bailiff. He himself ... sold. Garland is his deputy. He was first an assistant to a ... broker, and then assistant-auctioneer to Mr. Bentley; so that he ... his business thoroughly. He is a weekly tenant of Mr. Reilly's. ... know what tenure Mrs. Farrell has of the office from Mr. Gerald ... Mr. Bentley is a weekly tenant of the Corporation.

... Bentley has probably about £6,000 invested in the trade. A pawn- ... auctioneer must have a floating capital of £3,000 or £4,000.

... system of notices is peculiar to Dublin. In my establishment, in ... ...es's street, I have a large number of customers from the country ... outside the Circular-road), and many from the city. I have ... heard of any dissatisfaction amongst the country customers in con- ... of their not having received notice of sale. The city customers ... complain of having to pay the fee for the notice (*i.e.*, *3d.* for ... under 20*s.*, and 4*d.* for articles over 20*s.*)

... best business is country business. A week before a sale I put up ... in my shop that such sale is about to take place. I find that this ... makes the people redeem their property. On the morning of my ... numbers of people came and asked me to keep their property a ... er. I did so, and by so doing spoiled my sale. I did this be- ... wish to stand well with the people.

... notice need be given unless the person gives his address within the ...-road. They are not compelled to give any address. In fact the ... is hardly ever given. When the sum lent is under 4*s.* there is no ... required, and the residence need not be inquired. If over 4*s.* the ... broker must ask the residence. If the reply should be, "In the ..." no notice is required. I generally give private notices, for which

MINUTES OF EVIDENCE. — F. Francis Byrne, Pawnbroker.

I charge no fee, to country customers. I do this, however, of my own I am not compelled to do so. These notices come direct from myself through Marshal. I do not send them to the residence of persons pled but serve them if they should happen to be in my shop.

The form of notice used by Marshal is as follows :—

"Marshal, at the instance of ———, Pawnbroker.

"You are hereby required to redeem ——— (description of goods) w fourteen days."

Some owners of pledged goods attend auctions—not one, perhap of a hundred. These notices are of no use : it is, perhaps, a protect the case of sums over 10*s*. It would be sufficient if the pawnb themselves gave notice, without having a public officer for the pu They should be entitled to a fee for it, as it would be necessary to clerks, messengers, &c. I recommend that goods on which sums ove have been lent should be sold by auction.

The system of monthly returns by pawnbrokers to Marshal is pe to Ireland. I do not think they are of any use.

Pawnbrokers rarely lend sums over £10.

I am one of the sureties for Mr. Bentley.

The "dolly-shop" system does not exist in Ireland to any consid extent, as in England. In 1840, after the institution of the metro police, the pawnbrokers were kept to strict observance of legal hou then "dolly shops" sprang up.

There is some trade done directly with brokers.

No pawnbroker can be a receiver of stolen goods, for he gives a document to the pledger, and enters a full description of the goods books, which are open to investigation.

In three years, in my shop in James's-street, I have only had cases of stolen goods being received. We receive lists of stolen from police and watch every article presented to us, and if we ide we stop it and send it to the police.

We are not bound by the law to let policemen search, unless th a warrant.

Pawnbrokers in Dublin used to pay £15 licence fee, besides th fee. In 1853 this was reduced to £7 10*s*. by statute 17 & 18 Vic

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Documents handed in by Mr. Francis Byrne.

1.—RETURN of BUSINESS at his pawn-office, 31, James's-street, for year 1866.

Mr. F. BYRNE, Pawnbroker.

		£
Number of pawns,	76,981	
Amount lent on these pawns,	—	13,889
Number of articles redeemed,	70,117	
Amount lent on articles redeemed,	—	13,461
Number of articles sold,	4,884	
Interest on articles sold,	—	958
Profits gained by sale,	—	36
Value of articles sold,	—	516
Average cost of selling each pawn,		0
Average cost to establishment of each pawn,		0
Average profits on pawns sold,		0
Average profits on pawns redeemed,		0
Average sum lent on pawns,		0
Average value of articles redeemed,		0
Average time of redemption,	10 weeks 2 days.	

Documents handed in by Mr. Francis Byrne.

? —RETURN of SALES for one year (1866) at his Pawn Office, 31, James's-street, Dublin.

	Under 2s. 6d.	Over 2s. 6d. and under 5s.	Over 5s. and under 10s.	Over 10s. and under 20s.	Over 20s. and under 40s.	Over 40s.	Total.
. . .	105	51	26	11	2	–	195
. . .	366	62	1	–	–	–	429
. . .	346	105	72	15	4	–	542
. . .	183	43	–	–	–	–	226
. . .	92	56	102	27	3	–	280
. . .	375	100	89	43	18	–	625
. . .	373	51	1	–	–	–	425
. . .	365	95	45	13	6	–	524
. . .	211	36	16	7	4	1	275
. . .	248	84	82	26	4	–	444
. . .	250	45	–	–	–	–	295
. . .	442	140	33	10	–	–	625
	3,356	868	467	152	41	1	4,885

URN of REDEMPTIONS at his pawn-office, 31, James's-street, Dublin, for week ending Saturday, 19th May, 1866.

es on which sums lent not eeding	2s. 6d.		758
es on which sums lent above	2s. 6d. and not exceeding	5s.	313
,, ,,	5s. 0d. ,,	10s.	177
,, ,,	10s. 0d. ,,	20s.	84
,, ,,	20s. 0d. ,,	40s.	18
,, ,,	40s. 0d. ,,	100s.	15
,, ,,	100s. 0d.		1
Total, ...			1,366

.—RETURN of BUSINESS at his Pawn Office in Great Britain-street for week ending May, 1866.

	Not exceeding 2s. 6d.	Above 2s. 6d., not exceeding 5s.	Above 5s., not exceeding 10s.	Above 10s., not exceeding 20s.	Above 20s., not exceeding 40s.	Above 40s., not exceeding £5.	£5 and Upwards.	Total.
Loans issued, f Pledges re- . . .	658	403	188	46	21	12	1	1,334
eriod in which edeemed, .	759	313	177	84	18	15	1	1,366
	Average 10 weeks and 2 days.							
	Several over 12 months. The period varies from that to 2 years. All pledges of plate, jewellery, watches are kept 12 months in Britain-street.							
riod of redemp- . . .	Ten weeks and 2 days.							

Office of the Commission, Four Courts, Dublin, April 26th, 1867.

GERALD GRAY, esq., Divisional Auctioneer, examined.

Gerald Gray, esq., Divisional Auctioneer.

ncock.—You are one of the divisional auctioneers?—Yes, ap- y Government, but I do the business by deputy. I have been eputy and have asked him to attend here, as he could give more on on the subject than I could.

ot wish to ask your deputy, without first seeing you. Have you

MINUTES OF EVIDENCE.

Gerald Gray, esq., Divisional Auctioneer.

got a copy of your appointment?—I have not got it with me, b
can have it at any time, and I will bring my deputy with me.

I merely wish to ask you a few questions?—I did not think
necessary to bring my appointment. I got my appointment fro
late Lord Carlisle.

Can you fix the date of that?—I think it is about three years a
some few months. Sir Robert Peel was then Chief Secretary.

It is under this section, "That the Lord Lieutenant or other
Governor or Governors, for the time being, shall have power and au
to nominate and appoint two other auctioneers to the end that
shall be one auctioneer in each of the wards or divisions of the dis
the metropolis of the county of the city of Dublin, and that the s
persons, so nominated and appointed, shall have power to act as auc
within the division, district, or ward to which they shall be respe
appointed?"—Precisely, that is the rule.

That is the section under which you are appointed?—I think so

Were you an auctioneer before you were appointed?—Any pers
be an auctioneer by taking out his licence, but I was not brou
to the business. I took out my licence before I was appointed.
I received the promise of the appointment, I took out my licen
have it.

Did you pay your licence duty?—I did not pay it last year, my
pays it.

Did you pay it the first year?—I did, sir. I could not be appoi
first year without paying it.

When you were appointed, what arrangement did you make?—
appointed a deputy.

Who did you appoint as deputy?—Mr. John Fitzgerald. I
into bonds with the Government for the due discharge and perfor
the duty. My brother, Sir John Gray, is my first security, a
M'Ilwee and Mr. Short are my other securities. Then to gua
against anything I got counter-security from others.

You were regularly sworn in?—Yes, regularly sworn in be
Commissioners and before the Registrar, and I paid the necessary
everything in the Commissioners' office, at the Castle.

When you were sworn in, you then appointed your deputy?—

You then appointed a deputy to act for you?—Yes, and I
arrangement with him that he was to pay me £5 a week.

What is the name of the person whom you appointed?—John F

Since you appointed him you did not preside at any sale y
all?—Oh, no, I never sold.

Last year he paid the licence as auctioneer?—Yes, he paid
not. According to the bond and agreement he is to pay me
and above all and every expense, and for that I have good sec
have the agreement stamped.

Did he give you the same security as you gave the Gover
Precisely. His security is to me personally, so that if anything
my securities, my brother, Sir John Gray, Mr. M'Ilwee, and
would be held perfectly harmless. Mr. John Reilly does the sa
Mr. Garland is his deputy, and he farms it out in the same wa
been the rule for years to appoint a deputy, and of course you
that a great many Government officers do the same thing.

Have you got a copy of the agreement with you?—No, I did
it was necessary to bring it, but I can get it.

What tenure has your deputy of the office?—From year
could not let it for more than from year to year, from January t

He has merely a yearly tenancy?—Exactly.

ve that under the Act of Parliament there are certain accounts
s, and returns to be made to the Registrar?—Yes. Those I
look over and sign, and hand to the City Marshal.
them yourself?—Yes, I see them prepared and they dare not
out my looking over them, and without my signature.
don't exactly keep them yourself?—I do not.
tated that Mrs. Farrell has some interest in the room?—She has
t that her husband held the appointment for a long time. There
,000 sunk in it, and they never could collect a penny of it if it
f her hands. They had that interest in the room, and it would
I worked it myself.
aning of that is, I suppose, that the dealers get regular credit?—

late Mr. Farrell sold on credit to the dealers?—Yes.
the time of his death the sum you refer to was due by the
his estate?—Quite so. Mrs. Farrell conducted the room for
ni. as he was paralysed for a number of years. She was really
who managed the room for a number of years.
puty whom you appointed is really her servant?—He is a ser-
salary.
ner gets the auction fees?—Yes; she gets all the auction fees.
is on a salary from her?—He is, and has been for a number of
you would wish to see my appointment from Government I
t, and also a copy of my agreement. I will also bring Fitzgerald
an who is the head auctioneer. A man named Donnelly is
ctioneer and they both pay licence.
e both salaried servants of Mrs. Farrell?—They are.
ough the agreement is legally between you and Fitzgerald, it
agreement between you and Mrs. Farrell?—Not precisely; I
Farrell's name to the bond.
ne of your sureties?—Yes, for the due performance of the duty
eing discharged correctly.
re those people know more about how the sales are conducted?
y more. I go in about two or three times a week to see that
is going on right.
nat days are they engaged in selling?—Three or four times a
hour you would wish to see one of the principal men I will
ppointment for him to meet you; should you desire it, I will
ppointment with Mrs. Farrell and Mr. O'Sullivan to meet you
ck on Tuesday.
l be quite satisfactory. Mr. John Reilly, I presume, stands in
osition that you do?—Yes, in the same position.
the Sword-bearer nor City Marshal do the duty either, I
No; they have their deputies also; they are under the

all in the same position?—Precisely.

Office of the Commission, Four Courts, Dublin,
April 29th, 1867.

AY, esq., further examined; and Mrs. MARGARET E. FARRELL examined; Mr. O'SULLIVAN examined.

Mr. Gray said—Mrs. Farrell and Mr. O'Sullivan, our head
are now present. I was to have brought my agreement, but I
to get it; it is locked up in my brother's office, and his

MINUTES OF EVIDENCE.

Gerald Gray, esq., Mrs. Farrell, and Mr. O'Sullivan.

cashier, who has the key, is out of town ; I can produce it in a fe
On the last day you stated you wished to see my appointment, an
produce it (appointment produced). There is also the receipt f
Hamilton, solicitor, to the Dublin police.

Dr. *Hancock.*—Approving of your sureties?—Yes. I also pro
own solicitor's bill of costs for preparing the agreement betw
deputy and myself (bill of costs produced). It is a large item.

Could you get a copy of the agreement?

Mrs. *Farrell.*—My solicitor, Mr. Meldon, has it, and I can get
agreements are the same.

Mr. *Gerald Gray.*—Have you seen Mr. John Reilly's agreemen

Dr. *Hancock.*—Yes ; I have it.

Mr. *Gerald Gray.*—It is word for word with mine. I gave h
to have copied, and all he had to do was to have it engrossed
any further expense. You will find it is word for word with my ag

Mrs. *Farrell.*—Mr. Meldon has the agreement, and I will g
copy of it. I have business to-day with Mr. Meldon, and I will
for it.

Dr. *Hancock.*—The whole question turns on the agreement ;
wanted mainly was to get that agreement.

Mr. *Gerald Gray.*—I will get it.

Mrs. *Farrell.*—I have a copy of it. Mr. Fitzgerald's name
matter of form. I am the deputy. My husband had that app
first direct from the Government. Sir William Somerville got
husband. He held it fourteen years. He got softening of the b
during his life I conducted the room entirely myself. Upon my
death, Mr. Gerald Gray got the appointment, and Mr. Gray had
tion to my name lest it should not be perfectly legal. Then my
name was put in as deputy, but it is I who absolutely have
security. I gave Mr. Gray £1,900 security to carry on the roo
ing to the Act of Parliament, to obey the law.

Dr. *Hancock.*—Who are the securities?

Mrs. *Farrell.*—Mr. O'Loughlin, solicitor, of 99, Lower Gardi
And who else?—Mr. O'Loughlin's brother, and Mr. Fitzgerald
property in the county Mayo. He has an estated property the

None of them are engaged in the pawnbroking business?—No
quite distinct from the pawnbrokers. We come between the pa
and the dealers. I was very near getting the room on the ap
that Mr. Reilly got ; both Members for the City took the
warmly for me ; they considered that I should have got it.
my husband's money is sunk in the Church-street room, and i
conduct the room it would not be worth £500 to us. All the m
in the room is absolutely sunk for ever, you are obliged to giv
limited credit to a number of poor brokers who attend the sal
is so much poverty in Dublin, that pledges for the amount of
would be given, and you have to give credit. The better class
come from all parts of Ireland, and we are obliged to give the
the amount of £60 or £80 perhaps. They constantly bree
away, and our losses are tremendous. The expense of carry
business is £26 a week, before I put the price of a loaf in
I have to pay that independently of all losses which occur ex
the way of trade.

Could you make out a return of the amount?—Kidd an
accountants over my business, made out the account at £1,20
could show you a return that was made out.

Could you give a return showing the arrears, profits, and
the business for the last five years?—Yes, it could be obtain

e last three years ; I had it done ; before that I could not do

ee three years would do?—Very well ; I am a widow for
t time, and for the satisfaction of the family I got it made
last three years ; I could show it to you.
you for a return of that kind?—Very well. For the last
husband's lifetime, before Mr. Gray was appointed, I abso-
ed on the business myself.
ow carry it on in your own name?—Yes.
erks cast the accounts?—My clerks do. I have a cashier and
and the Messrs. Kidd and Reid, the accountants, check them.
s the accounts which are sent into the City Marshal?—Mr.
them.
ld Gray.—I am responsible.
rell.—I furnish the particulars.
ck.—Do you employ auctioneers?—Yes, two auctioneers ; my
neer is Mr. O'Sullivan ; he served his time to the pawnbroking

Gray.—I commenced it in the year 1837. I was seventeen
Mr. John Bentley of Capel-street. Since August last I have
. Farrell's employment.
been with Mrs. Farrell since August?—Yes, since the 1st of

rell.—I have another auctioneer under him named Donnelly ;
er ; he also served his time to the pawnbroking business.
would understand the selling of pledges if they had not served
o the business.
ck.—What division are you in?
livan.—The Barrack division.
—In appointing Mr. Fitzgerald my object was this, I did not
e a lady appointed as my deputy ; I was, in fact, advised that
do it, and I did not want to take the room from the widow
. I consulted Mr. Cantwell and Mr. Lawless on the subject,
id, "Get a respectable solvent man, and let him be your
get security, also have Mrs. Farrell as security, and we will
papers." Knowing there were over £10,000 sunk in the
getting the appointment I really thought it would be a pity
oom, as I said before, from the widow and the orphans, and
s to make some arrangement which would prevent that. I
r solicitors, and they were of opinion I should appoint Mr.
who is Mrs. Farrell's head cashier, and make him my deputy,
rity. Consequently, articles of agreement were drawn up,
stamped ; they are similar to those which Mr. Reilly has, but
w whether his are stamped or not. Mine are all stamped in
e them legal.
rnish me with a copy of those?—Yes ; you don't want me
stamped ones?
y will do if you state it is a true copy?—Very well. I con-
cument would be valueless if it were not stamped.
ld an auctioneer himself?
—He has nothing at all to do with the working of it ; he
nal deputy ; he has no power or authority in the room.
He is the head cashier, and had been so during the
he late Mr. Farrell.
The auctioneers doing the business are regularly ap-
Certainly, and pay their licence.
rell.—I attend there myself and superintend.

MINUTES OF EVIDENCE.

Gerald Gray, esq., Mrs. Farrell, and Mr. O'Sullivan.

Dr. *Hancock* (to Mr. O'Sullivan).—You were not sworn in [illegible] years ago I was, but not since I entered Mrs. Farrell's employme[illegible]

Mr. Bentley's employment I was sworn in.

You are not sworn in now?—I was sworn in since I became ass[illegible]

Mrs. *Farrell*.—It would not be necessary for him to be twic[illegible] in.

Mr. *Gray*.—I don't think it is necessary to be sworn in a seco[illegible] He has to pay £10 a year auctioneer's licence.

Dr. *Hancock*.—Was Mr. Donnelly sworn in?—I think not.

Mrs. *Farrell*.—He could be sworn in if necessary.

Dr. *Hancock*.—I only want to know how the fact is. There general question I would wish to ask. As a rule, is there much realized on the sales?

Mrs. *Farrell*.—There is sometimes a loss and sometimes a gain

Is there a surplus to any great extent?

Mr. *O'Sullivan*.—It is over and above the money lent and the Sometimes the surplus is considerable.

In what proportion of cases is there a surplus?

Mr. *O'Sullivan*.—It would be very difficult to answer that qu

Have you many applications by persons coming to look after the —The applications are pretty numerous, not very numerous, always apply to the pawnbrokers in the first instance, and if t surplus after deducting the interest and commission, the parti If a party wishes to know who purchased the property, they c and we give them all the information they require as to the the purchaser has an account with us we can give the name an but if they were cash buyers we would not be able to do so, fo take the names of those who buy for cash. It is only those wh account with us whose names and addresses are recorded in ou

I take it that the business is conducted entirely by selling to

Mr. *O'Sullivan*.—Entirely. Very few outsiders come in; t they like, but they seldom do come in.

Therefore, so far as the notice of sale is concerned, it is pr very little value to them?—Very little value.

Mrs. *Farrell*.—It is advertised in the public papers.

You advertise continually?—Yes.

The special notice which is sent to individuals respecting practically of very little value?

Mr. *O'Sullivan*.—The Marshal's notice is not of much indeed; the system might very well be abolished without an ever to the public.

Mrs. *Farrell*.—Few respectable persons give their own add

Dr. *Hancock*.—Parties pledging really valuable things don't their own address?—Yes; and therefore the notice is of ve Some people pawning silver plate give their own address, fo to redeem it.

Mr. *O'Sullivan*.—But, as a rule, many respectable person to give their real name or address.

It is, of course, the interest of the pawnbroker to sell thing advantage?—Yes.

And poor people who get their money on goods in the very seldom attend to purchase at the sale, and therefore sale is of very little value?—It just reminds them that th about to be sold. I don't consider it is of any value at all.

The sale in the public room is simply a compact dealers?—Yes, for the people who own the property hardly purchase it.

Gray.—By advertisement they know from what office the goods are to come.

never conduct a sale without an advertisement?

Sullivan.—Some small sales are not advertised.

Gray.—There are some very unimportant sales of soft goods not ed; a sale, for instance, of articles pawned for sixpence and ce.

you get things above a certain value it is usual to advertise the es, on Monday we put in the programme for the week.

a the general announcement you announce who is selling?—Yes.

Sullivan.—Some of the pawnbrokers have an objection to their ppearing in our advertisements, some on the other hand wish it, s object to it, merely wishing to announce a large and superior hout naming any office.

Farrell.—It is only one or two pawnbrokers who have got up very the trade who don't wish their names to appear as pawnbrokers.

O'Sullivan.—The great majority are in favour of their names g, for it is information to many persons who have property to pay the interest and redeem it.

g regard to the general circulation of the penny newspapers the ement is a very effectual notice?—Well, yes, very effectual.

more effectual than eighty years ago, when this Act was passed?

Farrell.—A great many persons would not get the individual n consequence of having given wrong addresses, whereas by the ement they can take up the newspaper, *Saunders* or *Freeman*, and n the sales are coming on.

O'Sullivan.—Again, the parties are constantly changing their , and the Marshal's man is not obliged to follow them. He is bliged to give the exact residence the party gave in, that is pro- is a valuable article, or an article on which there is more than llings lent. It is not necessary to give a Marshal's notice in of articles pawned under four shillings.

Farrell.—The advertisement gives a general notice which could not otherwise.

Sullivan.—I have known instances where parties had property and who had forgotten all about it after the lapse of six months. ertisement serves to remind them the article is in danger of being ss they come in and pay the interest or redeem the goods. I have great many instances of that kind. When they get a notice ave to pay for the notice when they come in to pay the interest m. They have to pay the price of that notice, which is three r a sum under one pound, and four pence for a sum over a pound.

eavy tax on the pawnbrokers.

does it operate as a tax on pawnbrokers?

Sullivan.—They pay the Marshal for the notice and the great of the articles are never redeemed or interest paid, so that they y lose the price of the notice which they have paid the Marshal. y take that into account again in advancing money on pledges? t think it exercises any influence over them at all.

re any statement which you would wish to make, Mrs. Farrell?

Farrell.—No, indeed, there is nothing which occurs to me to state.

O'Sullivan.—Mrs. Farrell is perfectly willing that things should s they are. The room is worked on very well and pawnbrokers ectly content with it.

u transact any other auction business?

Farrell.—I may say not. I have a slight partnership with Mr.

MINUTES OF EVIDENCE.

Gerald Gray, esq., Mrs. Farrell, and Mr. O'Sullivan.

Dillon. Some friends of my late husband gave sales to hi transacts those sales for me, but my auctioneer has nothing to d other auction business except the business in Church-street.

Pawnbroking auction business is a business which people m their attention to?—Yes, it is quite distinct. A pawnbroking would not understand agricultural sales, for instance, my two a merely sell the pledges.

Your husband devoted himself to it?—No, he did no he got the appointment it was carried on by Mr. Clarke, wh husband for the room. He received £10 a week for it, and in a time it came down to £8 and then £7, and then he want lower, but my husband would not consent and said he wou himself, and he did so on very liberal principles. He sunk £ it, and that £10,000 would not be worth 2s. 6*d.* in the pound carried on in any other way than it is at present.

You have the interest of as much as you can make?—£430 we received last year, not much for £10,000, for my entire time sidering my anxiety, trouble, and everything else.

People to whom you sell goods on credit don't pay interest give them the credit.

What length of credit do you generally give?—To some o to others three months and six months. We are sometimes pai ments, for instance, suppose a person buys £50 worth of goo at the end of a month we will get £20 of it. We were carry business for about eight or ten years, but it was a business m dreadfully disliked. He did not go into the room once in a even when he was carrying it on.

Mr. *O'Sullivan.*—The late Mr. Farrell was an auctioneer received the appointment.

Mrs. *Farrell.*—He was one of the first agricultural auctione and was accustomed to sell perhaps £2,000 worth of property Once or twice he attempted to sell the rags, but jumped out o almost with disgust and indignation. He was a very exte merchant besides. In point of fact all through it was I car business. I was dreadfully knocked up at the time he died. made exertions for the appointment, and both Mr. Pim and M the City Members, took the matter up most warmly. Th letter to Lord Wodehouse, who was then Lord Lieutenant, under all the circumstances it would be an act of justice to g appointment.

Were there legal difficulties in the way of appointing you?— put in to have it in the name of my son and myself. appears were never delivered to His Excellency at all, nor th tions from the Lord Mayor and Lord Mayor elect.

How do you know that?—By a letter from Lord Wodehous When I sent in for the memorial as it would be of use to me useful to have those papers returned, but I got a letter from t stating that no such memorial ever went before his Excellen there myself, but it was never given. My papers were some one.

Mr. J. Reilly was a candidate then?—Yes, he made assur sure.

Mr. *Gray.*—So far as I was concerned I wanted to have perfectly legal, and was guided altogether by my solicitor a

You will send in the document required?—You will have evening or to-morrow morning.

It will be certified by Mr. Meldon to be a true copy?—Y

...—Mr. Meldon has only a copy of the first agreement we had.
... the first agreement?—Three years ago.
... There was a copy of that made with the same sureties. If I will send in the stamped agreement, the original one, I will ... by one of the porters of the *Freeman* the moment my cousin

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... of LETTER from Sir ROBERT PEEL, Bart., M.P., informing Mr. GRAY of his appointment.

Documents handed in by Gerald Gray, esq.

Dublin Castle, 8th January, 1864.

... directed by the Lord Lieutenant to acquaint you that his Excellency ... pleased to appoint you to be Divisional Auctioneer, for the sale of ... dges, for the Barrack division, of the district of the metropolis of the ... the city of Dublin, in the room of Mr. Charles C. Farrell, deceased.
... id Lieutenant has made this appointment upon the understanding that ... perform the duties of the office in conformity with the provisions of ... rliament, and that you accept it subject to any changes in the nature ... of the office which the Legislature may at any time think fit to make.
... rrant for your appointment will be handed to you on the payment of ... fee of £1 9*s*.

I am, sir, your obedient servant,

(Signed), ROBERT PEEL.

... D GRAY, esq.

... of ARTICLES of AGREEMENT between GERALD GRAY, esq., and ... OHN FITZGERALD, as to Mr. FITZGERALD'S acting as Assistant ... neer of Barrack Divisional Saleroom.

... s of agreement made and entered into this second day of March, one ... eight hundred and sixty-six, by and between Gerald Gray, of Victoria-... Clontarf, in the county of Dublin, esquire, of the first part, and John ... d, of Summer-hill, in the city of Dublin, Gentleman, of the second ... Whereas under and by virtue of the several statutable enactments and ... vers in that respect existing and in force in Ireland, the said Gerald ... been nominated and appointed by His Excellency the Lord Lieutenant ..., as and is now the lawfully authorized and empowered auctioneer to ... ted pledges for pawnbrokers within the Barrack division of the county ... y of Dublin: and whereas the said Gerald Gray has nominated, and the ... Fitzgerald has agreed to act for him the said Gerald Gray, as his ... in the said office and appointment as auctioneer of forfeited pledges, ... fil and perform the duties thereof for the term and upon the conditions ... ter and under the circumstances hereinafter expressed, stated, and ... of and concerning the same. And whereas the said John Fitzgerald ... l himself with three sureties, in a bond of equal date with this agree-... said Gerald Gray, for the due performance of this agreement, and of his ... h assistant. Now, therefore, it is hereby agreed upon, by and between ... erald Gray and the said John Fitzgerald, in manner following, that is

... That said John Fitzgerald shall be and he hereby is appointed the ... of said Gerald Gray in the office of pawnbrokers' auctioneer for the ... division of the city of Dublin, pursuant to the provisions of the Act of ... orge III., chapter 49, Irish, for the period of one year, from the ... day of one thousand ... ght hundred and sixty-six, upon the terms and conditions herein specified.
... d—That said John Fitzgerald shall forthwith take and subscribe the ... scribed by said statute of 28 Geo. III., cap. 49, Irish, to be taken and ... d by the assistant or clerk of pawnbrokers' auctioneer.
... —That said John Fitzgerald shall and will act as such assistant for the

MINUTES OF EVIDENCE.

Documents handed in by Gerald Gray, esq.

period afor said, and shall and will at all times faithfully, honestly, and truly charge under the directions of the said Gerald Gray, the duties of assis said Gerald Gray, as such pawnbrokers' auctioneer for the Barrack div the city of Dublin.

Fourth—That said John Fitzgerald shall and will faithfully, honestly truly keep all books and documents, and fulfil, discharge, and perform every the duties, obligations, and requirements which by said statute of 2 III., cap. 49, Irish, the assistant of the pawnbrokers' auctioneer is requi keep, fulfil, discharge, perform, or satisfy.

Fifth—That the said John Fitzgerald shall and will well and truly pa the said Gerald Gray, his executors and administrators, on Monday i and every week to come of the year, from the twenty-third day of Ja one thousand eight hundred and sixty-six, the sum of five pounds s clear over and above all deductions.

Sixth—That the said John Fitzgerald shall and will bear and pay costs and expenses of every kind necessary or proper for the carrying on a and proper performance of the business of pawnbrokers' auctioneer Barrack division of the city of Dublin, incurred or sustained, o or that have been incurred or sustained during the continuance of this ment, and shall and will from time to time save harmless and indemnify t Gerald Gray, his heirs, executors, and administrators, from and against a costs and expenses, and all actions, claims, suits, and demands incurred, o incurred, made, or to be made, from the day of one thousand eight hundred and sixty-six, in relation to or in respect business.

Seventh—That on such payments as are mentioned in the fifth and articles, being regularly and duly made, the said Gerald Gray shall not the said John Fitzgerald to render any account of the fees, profits, or ments of the sales to be effected by him as such assistant as aforesaid, and be lawful for the said John Fitzgerald to retain the proceeds of such sale payment of the weekly sum of five pounds, as aforesaid.

Eighth—That the said John Fitzgerald shall and will at all times w truly save harmless and indemnify the said Gerald Gray, his heirs, exe and administrators of, from, and against all losses, costs, damages, injuri expenses resulting from or in respect or consequence of the sale, omission or other disposition of forfeited pledges, in the city of Dublin, or resultin or caused by or in consequence of the duties or obligations of the office o brokers' auctioneer, for the Barrack division of the city of Dublin, as af or any neglect or omission to perform such duties or obligations, or any

Ninth—That if, during the said term of one year, to be computed a said, there shall be any breach on the part of the said John Fitzgerald, before referred to sureties, or any of them, of this agreement, or of any part or of all or any of the conditions expressed in the hereinbefore mentione it shall be competent for the said Gerald Gray thereupon at once to rev appointment hereby made, but without prejudice to such rights or rem he may at the time of such revocation be entitled to against the sai Fitzgerald, his executors or administrators, or his sureties, or any of t their or any of their executors and administrators, by virtue of this agr and of said bond respectively. In witness whereof the parties aforesa hereunto set their seals and subscribed their hands the day and year fir written.

(Signed), GERALD GRAY, (
(Signed), JOHN FITZGERALD, (

Signed, sealed, and delivered by the said parties, in the presence of

(Signed), PATRICK G. O'LOUGHLIN;
(Signed), JOHN HENRY ROBINSON,
4, Upper Gardiner-street.

Documents handed in by Gerald Gray, esq.

of Bond from Mr. FITZGERALD, Mr. O'LOUGHLIN, and Mrs. ELL, to GERALD GRAY, esq., for Mr. FITZGERALD'S faithful discharge ies as Assistant Auctioneer.

all men by these presents, that we John Fitzgerald, of Summer-hill, y of Dublin, gentleman; Patrick Gilbert O'Loughlin, of Lower Gar- t, in the city of Dublin, merchant: Edward O'Loughlin, of Lower street, of said city, solicitor; and Margaret Farrell, of Ormond-quay, of Dublin aforesaid, widow, are jointly and severally held and firmly to Gerald Gray, of Victoria-terrace, Clontarf, in the county of Dublin, the sum of one thousand pounds, to be paid to the said Gerald Gray, ors, administrators, and assigns, to which payment well and truly to we do hereby bind ourselves jointly and severally, and our several and heirs, executors, administrators, and assigns, firmly by these presents, h our seals, and dated the second day of March, one thousand eight nd sixty-six.

s under and by virtue of the several statutable enactments, and other that respect existing and in force in Ireland, the above named and erald Gray is now the lawfully authorized and empowered auctioneer feited pledges for pawnbrokers within the Barrack division of the the city of Dublin.

ereas, by articles of agreement having equal date herewith, and made d into by and between the said Gerald Gray and John Fitzgerald, the nominated and appointed the said John Fitzgerald, and the said John has agreed to act for him, the said Gerald Gray, as his assistant in the and appointment of auctioneer of forfeited pledges upon the terms ions in said agreement specified.

dition of the above obligation is such, that if the said John Fitzgerald uch assistant, fully, duly, and faithfully, and without any manner of se, damage, or injury to the said Gerald Gray, discharge and perform and duties of assistant to said Gerald Gray, as pawnbrokers' auctioneer rack division of the city of Dublin, as in said articles of agreement and shall and will perform, observe, fulfil, and keep the several ditions, terms, and agreements in said recited articles contained and and on his, the said John Fitzgerald's part, to be performed, observed, d kept, then the above obligation to be void—otherwise to remain and orce and virtue in law.

(Signed),

aled, and delivered in the presence of JOHN HENRY ROBINSON, pper Gardiner-street.

JOHN FITZGERALD. (Seal.)
EDWD. O'LOUGHLIN. (Seal.)
PATK. G. O'LOUGHLIN (Seal.)
MARGARET E. FARRELL. (Seal.)

Return of Forfeited Pledges sold in Divisional Auction Room, 177, Church-street, Dublin, by Mrs. Margaret E. Farrell, with Gross Commissions and Expenses incurred for Five Years, ending 31st December, 1866.

	£	s.	d.
1862.			
Dec. 31.—To gross trade expenses, including salaries, rent, &c., for year ending this date, . . .	697	6	7
1863.			
Dec. 31.—To gross trade expenses, including salaries, rent, &c., for year ending this date, . . .	494	15	6
1864.			
Dec. 31.—To gross trade expenses, including salaries, rent, &c., for year ending this date, . . .	602	13	11
To amount paid Gerald Gray, ...	240	0	0
1865.			
Dec. 31.—To gross trade expenses, including salaries, rent, &c., for year ending this date, . . .	784	18	3
To amount paid Gerald Gray, ...	260	0	0
1866.			
Dec. 31. To gross trade expenses, including salaries, rent, &c., for year ending this date, . . .	964	19	0
To amount paid Gerald Gray.	260	0	0
,, Balance forwarded, ...	3,040	12	2
	£7,345	5	5

	£	s.	d.
1862.			
Dec. 31.—Gross amount sold for year ending this date, £21,998 11*s.* 4*d.*			
Commission on same, ...	1,649	9	9
1863.			
Dec. 31.—Gross amount sold for year ending this date, £18,067 19*s.* 8*d.*			
Commission on same, ...	1,355	9	7
1864.			
Dec. 31.—Gross amount sold for year ending this date, £14,142 5*s.* 6*d.*			
Commission on same, ...	1,060	3	5
1865.			
Dec. 31.—Gross amount sold for year ending this date, £21,116 6*s.* 3*d.*			
Commission on same, ...	1,583	14	6
1866.			
Dec. 31.—Gross amount sold for year ending this date, £22,406 1*s.* 3*d.*			
Commission on same, ...	1,696	8	2
	£7,345	5	5
By Balance forward (divisible), . . .	3,040	12	2

Sales being mostly on credit, this sum is subject to bad debts, which amount to a large sum.

Office of the Commission, Four Courts, Dublin,
April 29th, 1867.

MINUTES OF EVIDENCE.

John Reilly, esq., Divisional Auctioneer.

JOHN REILLY, esq., Divisional Auctioneer, examined.

[illegible].—I believe you are one of the auctioneers appointed under wnbrokers Act?—Yes.

e you got your appointment?—I have it at home.

you send it to me?—I will.

[illegible] appointed under the 28th of Geo. III., c. 49?—Yes; Lord onse appointed me last August twelvemonth.

you give the exact date?—Not at present.

n you were appointed auctioneer, what steps did you take to [illegible] the duties of your office?—I took an office at Merchants'-quay.

[illegible] an office that had been always used for the purpose?—Yes; d it from the son of my predecessor.

t was your predecessor's name?—Rodolphus Burke; from his son I the place.

you take out a licence?—I did.

you sell?—No; I got nothing to do.

you ready to do it?—I was ready to do it, but I got nothing

you an auctioneer before you were appointed?—Never.

ieve you are a member of the bar?—Yes.

ou hold any office?—I did—water-bailiff, under the Corporation.

long had you held that office?—From the year 1855.

have since retired from that?—Yes, on pension.

ugh you took out your licence, you found the pawnbrokers did ie to you to sell for them?—They did not.

t step did you take to fill up the office?—I farmed to Mr. Garland g to the usage of the trade, who understood that particular of business.

ad served his time?—Yes, to Mr. Bentley.

Bentley was a deputy?—He was the deputy of the Corporation—Sword-bearer. The reason I did not do any business myself was, I went to sell I would sell for ready money, and the pawnbrokers ot afford to give me the sales, because if I did not give the brokers he goods would be sacrificed. As I did not understand the busi- roughly I did not wish to speculate capital in it. I appointed y who did put capital into it, and who understood the business ily.

at date did you appoint the deputy?—The 19th of February fol-

bargain did you make with him?

Reilly hands in a copy of the agreement between him and Mr.

mentioned in this agreement that Mr. Garland has bound himself e sureties to you?—Yes; I gave three sureties to the Corpora- £500 each; I required the same from Mr. Garland as a matter of

are the names in this?—I will furnish the names.

ext point I notice in this bond is, "that the said Edward Garland l will faithfully and truly keep the books and accounts, and fulfil harge and perform all and every the duties and obligations and nts which, by the said Statute of the 28th George III., cap. 49, tant to the pawnbrokers' auctioneer is required to keep, fulfil, e, perform, or satisfy." He keeps the accounts?—Yes.

MINUTES OF EVIDENCE.

John Reilly, esq., Divisional Auctioneer.

Under the 18th section there are several accounts to be kept—a account of all the goods sold by each pawnbroker for every month, on oath if required?—He does that; I see that he does t

How do you see he does that?—I go to the office very often a look that.

In whose name does he make out these accounts?—In his own

He signs these accounts?—Yes; all communications are ma from the Marshal; he sends the accounts in his own name in to shal; he does that as my deputy.

Does he sign as your deputy, or his own name simply?—H "Edward Garland."

The account is kept by himself?—Yes; I see for my own sa he does it.

You don't either keep the account yourself or sign?—I do not.

Or examine it?—I do not; I see the course of business—tha thing he sells he enters.

You don't keep the account?—No.

You don't sell?—No; I sold the first day.

You paid your licence duty when you were first appointed?—

Did you pay it since?—I did not; I will pay it in July; th time for payment.

When did you first pay?—I paid it in July previous to my ment.

To be a licensed auctioneer at the time you applied?—Yes; in July, 1865.

Did you pay it in July, 1866?—I did not; I did sell in Ju but I did not sell in July, 1866; I do the whole business by de

You were appointed in August, and you did not appoint this d February following?—Yes.

There were some negotiations between you and Mr. Bentle time?—I was trying to get a deputy to carry on the business; to no one.

Did Mr. Bentley apply to you?—Yes. Mr. Bentley and a M applied to me, each offered me terms I did not think sufficient.

What were those terms?—Mr. Bentley offered me £3 a wee O'Brien offered me £4 a week; I could not do any business in time because the pawnbrokers would not give me anything to reason I assigned before, that I would not sell to the brokers The system of giving credit to the brokers produces a very ference in the moneys produced at a sale. If the brokers we to pay ready money it would leave very little to do, because the hand to mouth. The accommodation of credit tends to bring up largely for the pawnbroker, and therefore enables him to give m to the borrower. The system of giving credit, adopted throug rooms in Dublin, tends to the advantage of the poor—to the general, because it enables the pawnbroker safely to lend m upon the goods. When he has the saleroom to send them to, i the credit system enables him to realize more money through t from the broker. Therefore the public get larger sums in the fi in the way of loan, and in the next instance in the way of ret having paid the interest and principal to the pawnbroker.

Then the only persons that can safely carry on that system a have experience?—Who have a great deal of experience in broking business, and who have capital.

Mr. Bentley was a person who had a great deal of experie and hence it is my deputy is succeeding wondrously in t

had experience under Mr. Bentley. He was for many years on one of Mr. Bentley's salerooms.

under Mr. John Bentley he acted?—Yes, John Bentley was he man, for though Wm. Wellington Bentley's name was originduced into one of these rooms to have a different name for lessee, solved itself practically into John Bentley for years. A little as appointed John Bentley applied to the Corporation to remove Bentley's name from the saleroom that was in his name, and to h in his own name. Wm. W. Bentley got into some monetary s, wholly outside the pawnbroking business. Practically he had to do with the business of the saleroom for some years. His s used by his brother.

Bentley had been appointed to your room he would have had ms?—Yes, but his proposal was, I believe, to give up one of the on rooms for which he was paying largely; he was paying £6 r one and £8 a week for the other. He expected to get mine I suppose John saw that the brother was getting into difficulties, id not like the nominal connexion, for I believe it was only a connexion between them for years.

tention when he wanted to take your room from you was to give f the Corporation rooms?—Yes, I think that was his purpose. ed to the Corporation for a reduction of rent; I think it was to to terms. The Corporation refused his application.

the Corporation or the Committee?—The Committee adopted a of half what he asked.

reduction did he ask?—He asked £3 a week off one and £1 a the other, that is, he proposed £5 a week for each; he wanted e £3.

uction of from £8 to £5 was applied for as to one saleroom?— Sword-bearer's, the Rotundo division; the reduction from £6 to n the Marshal's or the Stephen's-green division.

the Committee recommended was a reduction of £1 on each?—

s to £7 for one, £5 for the other?—Yes.

all those negotiations pending between the time you were apand the time at which you appointed your deputy?—Not all the

l not raise the question till after you were appointed?—He raised tion after I was appointed.

e raise it after he offered to be your deputy?—No.

ou quite sure that he offered to be your deputy, or did you apply —I cannot say he did apply to me; but a person applied to me me: applications were made to me indirectly from John Bentley; met by mutual appointment, and he offered me this money and it; an indirect application was made before he applied to the n, but when we met he had his memorial going to send it into eration, but had not sent it in; that is my impression. I said to am about to set my room, and your sending this memorial into the ion will injuriously affect my property, because no one will take s while the rent of the Corporation rooms, that are so much more is in doubt. If you get a reduction of the Corporation rooms I rally have to let mine at a corresponding reduction, because the ion rooms are dependent upon the life of the Corporation, and there is a fixity of tenure, which does not exist as to mine or r's; in these the tenure depends upon our lives. Therefore I pray to send in that memorial for about a fortnight till I have my room

MINUTES OF EVIDENCE.

John illy, esq., ivisional uctioneer.

set." He said he would send it in, because he thought the time to pr Corporation for a reduction of rent was when my room was in the and could be had at £5 a week. "Well," said I, "don't do it." "I will he. "Then," said I, "I must look out for myself." I took active show the profit he was making. I drew up a statement for the Corp to show the profit he was making. The Corporation, on that stat refused his application. I showed that he was making £5,000 a year p He was doing nearly all the business in Dublin, for Mr. Farrell was time ill, and recently dead; and my predecessor was ninety years No one would venture any capital on a tenure dependent upon that The two parties who had recently occupied or rented my division Mr. Burke, my predecessor, were bankrupt actually when I took the from Mr. Burke. They both became public bankrupts very soon af

Was your predecessor, Mr. Burke, originally an auctioneer?—He he always set the office.

How many years did he hold the saleroom?—His appointment dated 1807.

He held it from 1807 till his death?—Yes.

Did he ever do the work himself in his earlier years?—He did, o intervals. I understand it is tradition in the trade he did do time himself; but for years he had not done it. He had set it to named Clarke, who became a defaulter; and then he set it to Mr. M who became a bankrupt. This was all within the last twenty year was because he was so old—this is my construction—that no ma capital would venture his money in the business as deputy, and, the none but broken-down men took upon them to do it. The last believe, borrowed the money from Mr. Burke himself to carry Mr. Burke was a rich man. Messrs. Young and Groves, who h business last from Mr. Burke previous to my appointment, became ba soon after. The capital they carried it on with was borrowed fr Burke himself.

What rent did they pay?—Six pounds. M'Nevin paid £6. I Clarke paid £8. The business increased from 1843. Mr. Beatle held the office at the passing of the Corporation Reform Act, was to John and William W. Bentley, and he got a clause inserted in t securing him in his deputyship of the two Corporation rooms, or the Corporation took the rooms they should pension him. At tha the whole sales of the four rooms amounted to £42,000, or £4 year; and the year before I was appointed the sales were £90,0 report on the subject from No. 3 Committee was brought bef Council early in February, 1866. The Council adopted it, and th ment I sent in was used in the discussion that took place. Some me for that paper; others thought it very impertinent of me to any such thing. The Corporation rejected the report. Until t settled I could do nothing; and on that very day, before I left poration, the nucleus of an arrangement with Mr. Garland wa That same day, a member of the Corporation, after the decisio Council on the subject, walking arm in arm with Mr. Bentley, sai —"Will you set that room to me for £4 a week?" "I will," said I, condition, that you work it yourself, and don't set it to Mr. Bentl would not give it to him for £10. I believe it would be a monop him have three rooms, and would be injurious to both the trade public." Mr. Bentley, sen., thought it worth his while, when t business of Dublin produced in sales £42,000 per annum, to ge inserted in an Act of Parliament, enabling him to retain them a week each. I also said they were now more valuable when

...ed in amount. That Mr. Bentley subsequently, when the ... was continuously increasing year by year, offered the rent he ... when the sales were only £40,000 a year. Now they must be ...e when the sales were £90,000 a year for the four rooms.

...e interest of the pawnbroker and of the poor that high prices ... get for the goods from the brokers by giving them credit?—

pawnbrokers were perfectly free to select their own auctioneers, ...y not select the people who would carry on the business in ...?—No, I think that would not do; I am perfectly free from pre- account of personal interest, as you may see by the nature of ...ment. I really think that no system that can be invented will ...k for the public as the present, because a man applies himself ...d that alone, like my deputy. He learns all about the brokers, ...onal knowledge of them and of their value. He knows to whom ...give credit and to whom he will not. It is his study. He ...himself exclusively to that; he, therefore, gives credit with more ...than an auctioneer, who would be acting only for a time; he ...t have the interest to sink large capital to enable him to get ...e prices which would not be got if depending upon the general ...stead of upon a particular branch of business. In this way the ...er gets better prices for his goods, and is, therefore, enabled to ...e to the poor who borrow from him. If there be any surplus ...cipal and interest the borrower has a chance of getting it back. ...y, as a matter of fact, often apply for the surplus?—You will ... never go into a pawnbroker's shop that you will not see an old ...oman with a big book, searching for a sale, to see whether more ...han the amount of the principal and interest, and to demand that ...om the pawnbroker: the pawnbroker won't go and look for the ... to return money; those persons do more than that: they take ...an entry in a pawnbroker's book, go down to the saleroom, and ...ound to show them the books containing the entries of the sums ...ot for the goods; you have the auctioneer appointed by the Go- ... you have men who understand the business—who have some ...nd who are enabled by so doing to make more for the public and ...themselves; if they don't give satisfaction to the pawnbroker ...t do business; the satisfaction to the pawnbroker is the getting ...t possible price for the sale of the goods; therefore you cannot ...ny other system that will work so well.

...the merits of the system is the competition between the four sale- ... Yes; but if the competition were much extended it would not ...any individual man's while to pay the exclusive attention paid ...t to that branch of the business; where another might come ...n, set up, and take his business away from him.

...the check on a deputy at the present is, that if he does not do ...ss satisfactorily the pawnbroker will go to another?—Yes.

...far a competition?—Yes.

...ought that competition would be injured, and something of a ... created if Mr. Bentley had the three salerooms?—Yes; he ...re the pawnbrokers too much in his power, and he would not so ... what prices he got; he would so select his customers to give ... that he would limit the number of customers very much; he ... the main, sell for ready money, and that would so affect the ...for the goods that I think the public would be injured; on the ...l, if the monopoly were broken up altogether, the business would ...no individual man's while as an exclusive business; the cus- ...rs have to be dealt with in the saleroom are so humble and so

MINUTES OF EVIDENCE.

John R. Ly, esq., Divisional Auctioneer.

uncertain. unless under the present system, where the life of their l
depends upon their punctuality with one or other of these rooms
would be resolved in the end into a ready money sale, and thus ther
be smaller prices got for the forfeited goods, and the pawnbroker
naturally lend less to the poor; I think it is a very happy med
way it is; I say that because I don't anticipate that in any cha
law might make those who hold appointments could be made wa
give a fair opinion, because I think I am safe to receive that incom
I live, and that if there were an alteration in the law I would be p
with a similar amount; I therefore give an unbiassed opinion;
tively and strongly think the present system is good so far; I do
any opinion on the other branches with which I am not familiar,
which I have not applied much attention; but I have given this
a quantity of thought as far as I could, and I honestly and truly
the present system, so far as it goes, is a good one; I have atte
my own divisional saleroom and stood by for an hour at the sale
found that in general the pawnbroker did not realise more at sa
the principal and a portion of the interest to which he would be
on the redemption. The surplus was scarcely sufficient to pay the
of the sale; I observed that the pawnbroker was always satisfie
article produced the principal sum he lent, and was well pleas
produced any portion of the interest; the profits of the pawnbr
on pledges for short periods; if the trade were thrown perfect
from the nature of the pawnbrokers' auctions it would end in two
parties having all the business without the security to the pul
got by the Government and the Corporation; for instance, if my
ran away, as did occur with Mr. Clarke, there would be no redr
predecessor had to pay the pawnbroker whose goods were in the s
if he did not pay it the sureties would have had to pay it;
resolve itself into the system that now exists without the securit

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Documents handed in by John Reilly, esq.

I.—COPY of APPOINTMENT of JOHN REILLY, esquire, as I
Auctioneer of Workhouse Division:—

By the Lord Lieutenant General and General Governor of Irel

WODEHOUSE,

In pursuance of an Act passed in Ireland in the 28th year of
of His Majesty King George the Third, We do hereby nominate an
Mr. John Reilly, in the room of Rodolphus Burke, deceased, to be
within the Workhouse division of the district of the Metropolis of t
of the City of Dublin, for selling such Pledges for Pawnbrokers a
forfeited, as in the said Act is mentioned: Provided that the said Jo
do previously to his acting as Auctioneer, within the Divisional
Ward aforementioned, comply with the forms in the said Act recite
take and subscribe the oaths prescribed by the said Act: and do
bond, and provide sufficient sureties for the faithful discharge of t
trusts reposed in him, as by the said Act is particularly expressed and
and the said John Reilly is to follow and observe all other directi
said Act contained.

Given at Her Majesty's Castle of Dublin, this 31st day of July, 18

By His Excellency's command,

(Signed), THOMAS A. I

Mr. John Reilly to be one of the Auctioneers for selling
forfeited Pledges for Pawnbrokers.

Documents handed in by John Reilly, esq.

of AGREEMENT between JOHN REILLY, Esq., and Mr. GARLAND, Mr. Garland acting as Assistant Divisional Auctioneer :—

Agreement made and entered into this fourteenth day of February, eight hundred and sixty-six, by and between John Reilly, Rockfield, Glasthule, Kingstown, in the county of Dublin, of the Edward Garland, of Royal Canal-terrace, in the city of Dublin, the second part. Whereas, under and by virtue of the several enactments, and other powers in that respect existing and in force the said John Reilly, esquire, has been nominated and appointed by ncy the Lord Lieutenant of Ireland as, and is now the lawfully and empowered auctioneer to sell forfeited pledges for pawnbrokers Workhouse division of the county of the city of Dublin. And he said John Reilly, esquire, has nominated, and the said Edward s agreed to act for him, the said John Reilly, esquire, as his assistant office, and appointment of auctioneer of forfeited pledges, and to perform the duties thereof, for the term, and upon the conditions, in and under the circumstances hereinafter expressed, stated and pro- and concerning the same. And whereas the said Edward Garland, himself with three sureties, in a bond of equal date with this agree- e said John Reilly, esquire, for the due performance of this agreement, duties as such assistant. Now, therefore, it is hereby agreed upon ween the said John Reilly, esquire, and the said Edward Garland, in llowing, that is to say :—

That the said Edward Garland shall be, and he hereby is appointed ant of said John Reilly, esquire, in the office of pawnbrokers' auc- r the Workhouse division of the city of Dublin, pursuant to the of the Act of the 28th George III., chapter 49, Irish, for the term of l life of the said John Reilly, esquire, upon the terms and conditions ified.

That said Edward Garland shall forthwith take and subscribe the ribed by said statute of 28th George III., chapter 49, Irish, to be subscribed by the assistant or clerk of pawnbrokers' auctioneer.

That said Edward Garland shall and will act as such assistant for aforesaid, and shall and will at all times faithfully, honestly, and harge, under the directions of the said John Reilly, esquire, the sistant to said John Reilly, esquire, as such pawnbrokers' auctioneer orkhouse division of the city of Dublin.

That said Edward Garland shall and will, faithfully, honestly, and all books and accounts, and fulfil, discharge, and perform all and duties, obligations, and requirements, which by said statute of 28th .., chapter 49, Irish, the assistant of the pawnbrokers' auctioneer is keep, fulfil, discharge, perform, or satisfy.

That the said Edward Garland shall and will well and truly pay unto hn Reilly, esquire, his executors and administrators, on Monday in very week to come of the years, from Monday, the nineteenth day of one thousand eight hundred and sixty-six, the sum of Five Pounds ear over and above all deductions.

That the said Edward Garland shall and will bear and pay all the xpenses of every kind, necessary or proper for the carrying on and roper performance of the business of pawnbrokers' auctioneer, for the division of the city of Dublin, incurred or sustained, or to be or en incurred or sustained during the continuance of this agreement, ed will from time to time save harmless and indemnify the said , esquire, his heirs, executors, and administrators, from and against s and expenses, and all actions, claims, suits and demands incurred, urred, made, or to be made, from the nineteenth day of February, ed eight hundred and sixty-six, in relation to, or in respect of ss.

That on such payments as are mentioned in the fifth and sixth ing regularly and duly made, the said John Reilly, esquire, shall not said Edward Garland to render any account of the fees, profits, or of the sales to be effected by him, as such assistant as aforesaid.

MINUTES OF EVIDENCE.

And it shall be lawful for the said Edward Garland to retain the pro such sales after payment of the weekly sum of Five Pounds as aforesa

Eighth That the said Edward Garland, auctioneer, shall and w

Documents handed in by John Reilly, esq.

times well and truly save harmless and indemnity the said John Reilly, his heirs, executors, and administrators, of, from, and against all loss damages, injuries, and expenses resulting from, or in respect, or in con of the sale, omission to sell, or other disposition of forfeited pledges in of Dublin, or resulting from, or caused by, or in consequence of the obligations of the office of pawnbrokers' auctioneer for the Workhouse of the city of Dublin as aforesaid, or any neglect or omission to perf duties or obligations, or any of them.

Ninth—That if during the said term of life, to be computed as afores shall be any breach on the part of the said Edward Garland, or of h referred to sureties, or any of them, of this agreement, or any part th of all or any of the conditions expressed in the hereinbefore mentioned shall be competent to the said John Reilly, esquire, thereupon at once t the appointment hereby made, but without prejudice to such rights or as he may at the time of such revocation be entitled to against the said Garland, his executors or administrators, or his sureties, or any of their or any of their executors and administrators, by virtue of this ag and of said bond respectively. In witness whereof the parties afores hereunto set their seals, and subscribed their hands, the day and above written.

(Signed), JOHN REILLY.
(Signed), EDWARD GARLAND.

Signed, sealed, and delivered by the said John Reilly, esquire, and the said Edward Garland, auctioneer, in presence of
(Signed), JOHN BYRNE, Lombard-street.

Office of the Commission, Four Courts,
Monday, May 6th, 1867.

Mr. EDWARD GARLAND, Assistant Divisional Auctioneer, exa

Mr. Edward Garland, Assistant Divisional Auctioneer.

Dr. *Hancock*.—You are an assistant auctioneer to Mr. John I am, in the divisional saleroom.

You hand this document in as the articles of agreement of February, 1866 (produced)?—Yes. I commenced my duty on of February, 1866. The agreement is dated the 14th February

It recites that you bind yourself in three sureties—who are th —Mr. John Behan, Great Brunswick-street, John Mulvany, street, and John O'Sullivan, Dawson-street.

Are they pawnbrokers?—No; these sureties were accepted by

You were regularly brought up to the business of auctioneer was for ten years in Mr. Bentley's employment, one of his auct

You were regularly brought up to the business?—I was.

It is your special business?—Yes.

It requires a person regularly brought up to it to carry it fully?—It does; no business in Dublin requires more special to carry it on successfully.

It is also a business which involves the giving of a very c amount of credit?—It does to the dealers.

Purchasers at the auctions are exclusively dealers?—Nearly

I suppose the poor people themselves very seldom come to the dealers?—I could not say; they might be present at the

You got to know the dealers pretty well?—Yes.

Very few outsiders come?—Well, they do, but they form a proportion of the purchasers; that is accounted for by the cla they sell, second-class trowsers and waistcoats.

Mr. Edward Garland, Assistant Divisional Auctioneer.

e distinct sales at different hours?—I have. On Mondays I
sell exclusively to soft goods. On Tuesday hardware, at ten
twelve o'clock on Tuesday another sale of soft goods; and at
in the evening a sale of soft goods; and at eight o'clock in
watches and plate. On Wednesday boots and shoes, at ten
goods at five o'clock, and at eight o'clock a sale of a miscel-
character, comprising pictures, jewellery, musical instruments,
It is for books, musical instruments, and plate the strangers
They might attend a soft goods sale and buy pieces of cloth, or
that kind.

chasers are persons who want to get bargains rather than the
originally pawned the articles?—I cannot say that I ever
owner of an article to go bid for it in a saleroom. I have known
of goods to be there watching the sale, seeing that they were
old, possibly with the view of checking the pawnbroker if he
ong return, which is not at all likely.

say, after your experience of ten years as Mr. Bentley's auc-
ther there is much surplus realized, particularly on the sale of
ls?—Occasionally there does be a surplus, but not generally.
there may be a profit on pawnbrokers' sales, and the following
may be a loss.

ar years are favourable?—Yes. Goods are pawned in 1866,
sold in 1867. If the raw material is very expensive, owing to
ax, goods go up, and there is accordingly a profit or loss, as the
e. Pawnbrokers may have goods five per cent. dearer one year,
may be sold for five per cent. less, and that involves a difference
cent.

ws from that, that compelling pawnbrokers to keep goods a
e increases his risk?—It does.

ssibly diminishes the value?—Yes; it would have a tendency
te the value. The present regulation as to time is very fair.
y diminution in point of time would diminish the risk?—It
the sales of watches, jewellery, and books the public buy to a
r extent than they do in second-hand goods. For instance, a
person won't buy a second-hand coat, but very often resell an
t would not fit; it is a usual thing to do.

n the case of goods of more or less value you have not ordinarily
—No, not ordinarily.

n those cases there is not usually a surplus?—Certainly, we
It might occur that a pawnbroker would lose £20 on a sale,
ve to give a surplus. As a general rule, they tend very closely
alue, because they may always depend on having an excellent
The discretion of selling is with me, but the discretion of what
bring does not lie with me. I must sell to the highest bidder.
discretion in selling, but when I put an article up for sale I
the highest bidder.

any means of knowing what has been lent on the goods?—
have not, but I have; I must know it. The pawnbroker's
mediately under my inspection, and the number of the article.
very article you put up for sale you know the sum which has
n it?—I do: the pawnbroker's book is beside me, and I have
nity of knowing in every case.

wnbroker tell you to withdraw an article?—He might.

ften done?—It is not at all frequent.

and injure the sale generally?—Yes, the spirit of buyers
fected: the pawnbrokers would rather sell under value than

MINUTES OF EVIDENCE.

Mr. Edward Garland, Assistant Divisional Auctioneer.

Do you feel your main business discharged when you get t originally lent?—That does not form a criterion at all. I sell the highest bidder. I am sure I have a good market. Both country buyers have accounts. We have accounts with dealers town in Ireland; they attend and buy at the auction, and t away in a large bale. In 99 cases out of 100 I am likely to r full market value on account of the competition in our market.

Do the brokers reside in different parts of the city?—They ar all over the city.

Have you different customers in one sale from another?—No rally speaking, the dealer that has an account with me will account with Mr. Bentley and Mr. Fitzgerald. I have some customers, so has Mr. Bentley, and so has Mr. Fitzgerald—but the same people deal with all.

Is there any advantage in having the salerooms near each There is an advantage to have them as near as possible, in orde buyers may go from one place to another; for instance, sales take place at different hours, which enables the one buyer to a auctions—so that the nearer the rooms are to each other, the b we were all selling at the one time we would have the fewer bu we arrange it so as to prevent our business clashing; for instan I sell furniture, and there is no furniture sale elsewhere. So wi to other articles the same rule applies.

There is an understanding amongst you for your mutual adv Yes, for our mutual advantage, and for the protection and acco of our buyers, and for the accommodation of the public, in orde the best value and afford the best market it is possible to have.

Do you discharge the whole auction duty yourself?—I em sistant.

Do you both pay licence?—Oh, yes.

You have only one licensed assistant?—That is all.

You keep the accounts yourself?—No, I have a book-keeper, as much of the accounts as I can, and I check them. I write counts I can spare time to do.

But the accounts required under the Act of Parliament to b book-keeper under your direction keeps?—Yes, and Mr. Re that entirely to me.

Do you send these in your own name?—In my name to the I send an affirmation, a copy of which I have in the office, cer the sale effected by me in the divisional saleroom, from such a a date.

That is in the terms of the Act of Parliament?—Yes, I sign and take it to a magistrate and declare it, and I lodge it. who is a neighbour of mine, endorses it, "Declared before m

Do you advertise in your own name also?—Oh, yes, in m and usually in the name of the pawnbroker. It is not alwa in nineteen cases out of twenty it is done.

Does the advertisement give protection to persons who about being sold?—It is a notification to them there is to be a office in which they have goods pawned, and it very often good deal of depositors, who will either arrange with the pa hold over the goods, or redeem them. The pawnbroker o posters to let the public see the kind of sale which is about t in order to bring in parties and get the goods released.

They are not bound to do that by Act of Parliament?—N And notwithstanding they nearly all do it?—Nearly all.

They do it as more satisfactory to customers?—Yes.

Mr. Edward Garland, Assistant Divisional Auctioneer.

...ness to them, and they think it advantageous to their ...ding with customers, to do what is fair towards them?—Yes, and ... wish at any compulsion by Act of Parliament. I saw it ... office calling on depositors who had goods forfeited, to bring ... in order to have the surplus, if any were realized, returned ... that the sale-book might be examined, and if there was ... that it might be returned to the depositors.

... known in your experience any cases where the people dis- ... pawnbrokers?—There were very many cases where owners ... to see if my account tallied with the pawnbroker's account.

... with the pawnbroker's account?—Yes, very frequently. They ... duplicates also, to see can I give them the name of the buyer, ... may buy the goods back from the brokers; in that way goods ... ly bought back from brokers, and sometimes at a less cost than ... ake to redeem them.

... kers get them at the auction, and are willing to sell at a slight ... es, and the money they paid and the profit would not come to ... s it would take to redeem the goods.

... in cases where the price has fallen?—Yes, and when more than ... was advanced.

... any other matter which you may wish to state in respect of your ...—Well I don't know that I have. Possibly I may state one ... er to show the fairness with which the pawnbroking business is ... as a rule. Some time ago an embarrassed trader went away to ... aving his wife. I was aware of the state of his affairs, and she ... to look over his papers and accounts; I did so, and amongst his ... bserved the duplicate of a watch and chain, at that time four ... half pawned; I saw by the name of the maker that the watch ... ly a good one, made by Donegan; she said it cost £16. I asked ... apply to the pawnbroker for surplus, she said she did not, and ... to do so. The pawnbroker was not bound to give any surplus ... after sale, but I told her he was a very honorable man, and ... fairly with her; she accordingly went to him and she got 35*s.* ... The pawnbroker had sold it fifteen months after it was ... He charged his interest and expenses of sale, and after such a ... e returned that amount of surplus; that is one instance to the ... e trade.

... that under no compulsion?—Under no compulsion, but from a ... o what was right and fair.

... quite outside the Act of Parliament?—Yes, the general dis- ... the pawnbrokers is to act in the same spirit. They are a most ... body of men.

... give a return for twelve months, showing the gross profits and ... f the business. I have received a similar return from Mrs. Farrell, ... entley is giving one, and you will give it also, taking it from ... of your appointment for the whole year?—I will.

... ing a fair average of it?—Very well. I was so well known that ... t I got into business I did a large trade.

... e return from the 1st of March?—Very well.

... n of the gross profits and expenses?—Yes; shall I make any ... o losses?

... profits you set off losses, ascertained losses?—Very well.

... ur gross commission is and your expenses, including your pay- ... r. Reilly?—Very well.

MINUTES OF EVIDENCE.

Document handed in by Mr. Edward Garland.

ACCOUNT of PROFITS and EXPENSES in the WORKHOUSE DIVISI ROOM, 8, Merchants'-quay, for the year ending 1st March,

Profits.	£	s.	d.
3 Months ending—			
31 May, . .	394	15	9
31 August, . .	517	0	6
30 November, .	626	5	4
28 February, .	472	4	7
	£2,010	6	2

Expenses and Los	
3 Months ending—	
31 May, . .	27
31 August, .. .	2
30 November, .	3
28 February, .	3
1 Year's Rent, .	
1 Year's Taxes, .	
1 Year's ascertained Losses, . .	1
	£1 5

(Signed), EDWARD G

Office of the Commission, Four Courts,
Tuesday, 7th May, 1867.

Mr. John Keegan, Secretary of the United Trades' Association.

Mr. JOHN KEEGAN, Secretary of the United Trades' Association, c

Dr. *Hancock.*—I believe you received a copy of the commissi after it was issued?—Yes.

To whom was it addressed?—It was addressed to the Secret United Trades' Association.

Did you bring it before a meeting of the Association?—I resolution was adopted in reference to it.

Can you send here a copy of the resolution which was so ad will send you a copy of the resolution.

Were you under the impression then it was not to be a publi —We inferred from the commission that it was not to be a publ and we were disappointed. We were under the impression o would have been complied with to have a public inquiry.

Did you consider you had completely stated your case?— M'Evoy stated the case on our behalf.

You considered the arguments you had to offer were suffi by Mr. M'Evoy?—We did, and we had an admission from t ment that we made out a *prima facie* case.

Do you mean that the fact of granting a commission of inqu a certain amount of admission of your case?—Yes, as a matter Fortescue stated to the deputation that we did make out our c

And on that, that it was necessary to have an inquiry?—Ye for a public inquiry, but we were not given to understand t which it would be conducted.

Your objection is that you had not an opportunity of cross the pawnbrokers?—Yes, that their conduct all through was secret.

And your objection is that you have not had an opportuni examining them?—Yes.

You consider your case was fully stated by Mr. M'Evoy?— don't know what statements or what objections the pawnb made respecting the system.

As to any matters mentioned in the commission as to the am the nature and extent of the duties of Marshal, &c., you hav statement to make?—No further than what is contained in t

You will send a copy of the resolution of the Associatio been referred to?—I will.*

* The resolution has not been sent.

Office of the Commission, Four Courts Dublin,
May 9th, 1867.

MINUTES OF EVIDENCE.

William J. Henry, esq., Town Clerk.

:ILLIAM J. HENRY, esq., Town Clerk of Dublin, examined.

—:— When the late Mr. Thomas Reynolds died you were Marshal?—I was appointed Marshal *pro tem.*

:ed Mr. Bentley as your deputy?—I did.

, of course, you acted under the direction of the Corporation?—specific direction from them.

Mr. Arkins and Mr. Reynolds were originally appointed there arrangement made that they should receive a salary instead of of their office?—Yes, there is an existing arrangement; there arrangement made with both of them, and that arrangement in force as far as Mr. Arkins is concerned.

time of their appointment the existing officers were pensioned J. J. Butler has a pension at present of £444 1*s.* a year from the on, as late Marshal.

under the Municipal Reform Act?—I think so.

ension is paid to him still?—Yes.

what fund is that paid?—It is either out of the borough fund, provement fund; it is paid quarterly.

arrangement was made with the late Mr. Reynolds?—He was £350 a year, paid quarterly.

Municipal Reform Act the late Mr. Bentley's rights as deputy served, he could not be removed without compensation?—I

nount paid by him, as deputy to the Marshal, was fixed in that es, Mr. Reynolds received £350; he paid into the borough fund es he received in right of his office, first deducting the rent of his salaries to his clerks, the cost of stationery, and other contin- and his own travelling expenses on his tours of inspection; eting all these he paid in the balance of the fees I think every nths to the Corporation, and received in the ordinary way £350 Mr. Crean is receiving the same salary now.

ean was appointed on the same terms?—Precisely the same h this exception, that Mr. Crean's election is an annual one. Mr. was elected but once. Mr. Crean was elected the other day for

e discharge any duties for the Corporation besides his duties con- th pawnbroking?—He attends all our Council meetings; he at- marshals the civic processions; he attends the Lord Mayor when markets; upon all state occasions, when the Lord Mayor requires oration officers to be in attendance, the Marshal is considered is required to be in attendance.

no other substantial duties?—No, nor has he any office in the . His office is in St. Andrew-street.

lary he is paid is for all the duties he performs?—For every-

vith regard to the Sword-bearer he still continues under the ar- t made when he was previously appointed?—Yes.

ve there was a rise of salary in his case after the death of his or?—There was a rise of salary for both Mr. Reynolds and Mr.

rangement that subsisted at the time of the passing of the Act so r. Bentley was concerned, appears to have continued up to his disturbed?—I think so.

Mr. Bentley died the Corporation seem to have actively inter-

MINUTES OF EVIDENCE.

William J. Henry, esq., Town Clerk.

vened as to the appointment of his successor and the terms upo he was appointed?—The answer to this question can be supplied books of the Corporation.

Mr. *Henry.*—The subject of the rent of one of Mr. Bentley's under discussion at present. He was paying £8 a week for one r £6 a week for another; that was £14 per week. The Council report the other day recommending that Mr. Arkins and Mr. Cr liberty to give him one room at £6 per week, and another room a week. Except in that way the Corporation do not interfere; the like to make appointments; they say they will allow Mr. Arkins Crean to do so and so. When Mr. Bentley gave notice that h give up the two rooms, both Mr. Arkins and Mr. Crean, on recei notice, reported the fact to No. 3 Committee. In one instance Mr. who, as Sword-bearer, is entitled to one of the divisional sale-roo directed by the Committee to advertise it. He did advertise it months, and no offer was made by anyone but Mr. Bentley; a Arkins was allowed to give it to Mr. Bentley at the reduced offe the last meeting of the Council a report came up from the Commi the subject. Up to 1851 they seem not to have dealt with it manner.

Dr. *Hancock.*—Section 208 of the 3rd and 4th Vic., c. 108, of the cipal Act, says, "That whereas the Sword-bearer and Marshal an assistants have enjoyed certain privileges," &c.; and it goes on to "that the assistant auctioneers are to remain in office notwithstand removal of the Sword-bearer and Marshal." That arrangement su until Mr. Bentley died?—Of course. It could not be broken through the Act of Parliament.

From his death the Corporation appear to have paid the salaries?—Yes. Any information in the books or any averments on the subject I will search for and let you have. There is no do object of the Corporation in paying the officers by salary was to m most they could for the borough fund.

PAWNBROKERS.	January.	February.	March.	April.	May.	June.	July.	August.	[illegible]ber.	[illegible]	[illegible]	[illegible]	[illegible]
H. Booth, Thomas-street,	183	.	.	190	.	185	.	168	78	172	.	.	97
J. Boyle, Bride-street,	.	.	.	.	.	.	.	.	.	.	.	101	107
M. Boyle, Luke-street,	34	.	82	.	81	.	.	.	124	50	.	100	171
Do. Phœnix-street,	.	.	93	.	13	.	80	.	.	86	.	76	350
M. Browne, Mount-street,	36	21	68	.	41	.	.	.	37 / 83	.	.	.	286
F. Byrne, James's-street,	.	65	103	45	57	.	32	.	85	22	43	45 / 32	529
F. F. Byrne, Britain-street,	.	122	.	98	.	42	41	47	19	31	.	28	428
John Byrne, Lombard-street,	36	69	.	79	104	67	107	63	171 / 46	.	.	60	802
Richard Byrne, Talbot-street,	35	.	129	.	44 / 34	.	39	.	87	23	52 / 23	.	466
Partick Claffey, Nicholas-street,	47	59	72	.	32	31	108	.	36	32	46	40	503
James Cunningham, Summer-hill,	.	11	.	.	.	.	.	6	.	.	.	.	17
Richard Delaney, Meath-street,	14	32	.	.	47	.	84	.	59	52	24	32	344
Do. Pembroke-street,	57	65	28	31	43	32	14	31	37	48	41	45	472
Thomas Dillon, South King-street,	49 / 51	56	72	.	77	.	61	64 / 59	.	132	.	.	626
Thomas Fannin, Marlborough-street,	102	.	136 / 33	86	.	107	120	.	201	.	102 / 41	.	928
Terence Fennell, Denzille-lane,	.	.	55	.	5	18	.	.	.	74	27	.	179
John Flanagan, Coombe,	62	.	5 / 40	96	.	77	6 / 67	67	.	56	.	79	555
Do. Capel-street,	.	.	120 / 48	56	.	61	.	72	74	107	.	.	533
John Halbert, Francis-street,	147 / 47	.	.	.	96	.	110	.	.	.	.	.	400

[*continued.*

I.—Return of the Number of Notices for the Sale of Forfeited Pledges, served by the Marshal at the instance of the Dublin Pawnbrokers, during the Year ending 31st December, 1866, made by Mr. Beahan, Clerk in the Marshal's Office—*continued.*

Pawnbrokers.	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.
Nathaniel Halbert, Corn-market. . .	90	111 46 204 28	.	113	141	98	159	35 94	83	128	31 209	112	1,654
Eliza Hasson, Britain-street, . . .	70	.	39 38	55	.	.	.	113 1 43	66 29	.	.	43	525
Edward Hayden, Clarendon-street, .	119	.	225	.	105	.	32	153	137	82 1	61	147	1,062
Martin Hayden, Upper Dorset-street, .	.	.	.	.	.	.	.	.	.	.	.	.	Nil.
Anna Higgins, North King-street, . .	13	19	20	15	47	23	31	23 54	20	43	.	19	327
John Keane, Aungier-street, . . .	23 16	14 24	42	17 35	.	26	.	64	.	50	.	70	381
James Kearns, Thomas-street, . .	.	.	42	.	.	.	.	.	49	.	43	.	134
Do. Summer-hill, . . .	.	.	.	.	.	.	.	.	.	69	.	26	95
Peter Keon, Bolton-street. . . .	.	94	75	37	62	.	60	.	87	.	77	.	492
Richard M'Lowry, St. Andrew-street, .	.	.	181	.	.	.	122	.	.	.	97	.	400
Laurence M'Nally, Moore-street. .	.	.	.	.	.	.	.	10	.	8	.	.	18
Joseph Martin, Fleet-street, . . .	64 21	114	45	161	109	49	60 85	83	78	117	140	98 28	1,252
Sophia Maryon, Golden-lane, . . .	.	.	21	.	18	9	.	.	.	.	.	.	48
Margaret Meredith, Cuffe-street, . .	.	.	52	.	.	.	.	61	.	.	111 3	.	227
James Nolan, Pembroke-quay, . . .	.	21	.	7	.	.	.	.	7 5	.	.	.	40
Peter O'Brien, Church-street, . . .	.	75	41	.	50	.	39	.	68	.	15	68	356

William Potter, Talbot-street,	.	.	124	100	120	58	75	.	216	75	23	112	83	1,076
Denis Redmond, George's-street,	.	131	.	93	.	56	.	.	282 / 28	.	19	.	978	
James Redmond, Mary's-abbey,	.	214	.	60 / 13	.	21 / 56	.	73	.	.	30	.	497	
Do. Abbey-street,	.	37	.	.	.	.	18	16	.	.	.	.	71	
Bernard Rispin, North Anne-street,	.	.	111	.	.	.	45	.	191	.	.	48	393	
James Rispin, Charlemont-street,	15	17 / 1	2	.	.	19	.	.	.	.	.	.	54	
Patrick Rochford, Townsend-street,	.	50	.	28 / 8	.	.	61	.	25	83	.	19	274	
Henry Spencer, Coombe,	.	.	.	31	.	.	.	.	22	.	.	.	53	
Michael Tynan, Upper Dorset-street,	.	1 / 78	.	.	.	.	10	.	133	27	.	.	249	
Valentine Wall, Cuffe-street,	.	.	.	59	.	.	.	.	.	165	.	.	224	
V. W. B. Wall, Wicklow-street,	.	.	.	.	.	.	.	.	.	.	.	71 / 61	132	
James White, Winetavern-street,	125	.	81	97	.	188	.	142	42 / 78	50	103	.	906	
Do. Exchange-street,	83 / 39	.	57	35	.	47	133	99	43	76	.	145	762	
Richard White, Bishop-street,	92	75	36 / 36	106 / 115	148	145	102	80	84 / 23	74	63	.	1,284	
Total,	1,938	2,115	2,549	2,038	1,744	1,524	1,913	2,124	2,968	2,607	1,666	1,760	24,354	

I have prepared the foregoing Return, and certify that same is correct.

(Signed), JNO. BEAHAN.

Marshal's Office, 4th June, 1867.

MINUTES OF EVIDENCE.

Return handed in by Mr. Martin Crean, Marshal.

II.—RETURN handed in by Mr. Martin Crean, Marshal of the C Dublin, and Registrar of Pawnbrokers, contrasting the nu Notices issued with the Number of Sales by certain Pawnbr Dublin.

PAWNBROKERS.	Number of Notices served last Year.	Gross Amount lent on Goods noticed.	Gross Amount of Sales in Divisional Auction Rooms.	Gross Number of Lots in [illegible]	Gross
		£ s. d.	£ s. d.		
N. Halbert, Corn-market,	1,564	744 3 8½	1,868 2 7	123,839	199
J. Cunningham, Summer-hill,	17	20 8 11	2,800 16 0	79,205	93
L. M'Nally, Moore-street,	18	38 5 9	2,124 13 1	71,080	142
J. Rispin, Charlemont-street,	39	85 10 3	2,876 18 4	102,567	279
J. Kearns, Summer-hill,	95	98 13 5½	1,258 14 11	132,873	253
" Thomas-street,	134	71 18 4½	816 17 3	80,922	144
M. Hayden, Upper Dorset-street,	None.	—	603 1 1	50,279	58

APPENDIX B.

CORRESPONDENCE AND RETURNS.

Letter from Mr. John Byrne, Pawnbroker, to Secretary of Commission.

1.—COPY of LETTER of Mr. JOHN BYRNE, pawnbroker, to C. KIRKPATRICK, esq., Secretary of the COMMISSION.

Lombard-street, Dublin, March 9th,

SIR,—In reply to your note of the 6th instant, I beg to forw following statements, the grounds for which can be verified up if required, by numerous witnesses.

I take the heads of inquiry, five in number, from the publ papers, being the only source of information regarding the scop inquiry at present within my reach, and treat of them in their n order as therein published, as follows, viz. :—

First, the difference in the laws respecting the trade of pawnbr Ireland and in England and Scotland respectively. Inasmuch respective Acts of Parliament will, of themselves, give all the i information upon this head, it is unnecessary to state it here, especially as under No. 5 the statements I wish to submit w properly come.

As to No. 2, being the difference as to the amount of fees a imposed upon the trade of pawnbroking in Dublin and on the ot of the United Kingdom, it may be observed that in England a land the annual licence fee is £15.* In Ireland it is but £7 10s excepted) with 12*s.* per annum additional to the Marshal of D recording the annual return of sums lent and number of pa in Dublin there is an additional licence fee of £100 (Irish curr annum, which goes in aid of the police tax. There are also fee to the Marshal for notices averaging about £12 per annum, fees to the divisional auctioneers for the sale of forfeited pledges, about £100 per annum.

As to No. 3, being the manner in which the duty of selling pledges is discharged in the city of Dublin by the officers with the same, and the amount of the fees or remuneration re respect of such sales, by whom received, and how applied—ther divisional auction rooms in Dublin; one is allotted to the Ma to the Sword-bearer, and one each to two other persons appoint by the Lord Lieutenant of Ireland for the time being. Those their duly appointed deputies, are paid by the commission of per cent. upon the amounts realized by the sale of forfeited pl of which all expenses of valuators, advertising, clerks, &c., are and those officers having no connexion with the pawnbrokers u

* £15 in the London District, and £7 10*s.* in the rest of Great Bri

Letter from Mr. John Byrne, Pawnbroker, to Secretary of Commission.

the goods are thus sold, the utmost impartiality is secured, and
ess to the contrary was ever made within my knowledge.
ls of the several descriptions are always sold at the times most
secure the largest attendance of *bonâ fide* purchasers; and
uction rooms have become all over the kingdom celebrated as
where buyers resort to supply themselves in a short period, and
ss of time, with the several descriptions of goods which they
And as a consequence of this—together with the large amount
embarked in the business, enabling the auctioneer to give liberal
the purchasers—the several articles realize much higher prices
ar ones do, when sold in the auction-rooms of other or non-
l auctioneers.

rporation of Dublin, who have the patronage of the offices of
and Sword-bearer (by giving those officers a fixed salary, who,
quence, pay the fees of their respective offices into the Borough
Dublin) realize a large sum per annum in aid of the funds
ered by that body.

ficers appointed by the Lord Lieutenant farm out their appoint-
deputies for a payment of £250 or £300 per annum each, for
nduct, however, they are responsible; and no complaint can be
ded of the manner in which any of the four deputies—viz., of the
the Sword-bearer, or the two government officers discharge the
their respective offices. The deputies of the Marshal and Sword-
ay respectively to the Dublin Corporation £350 and £400 per
r the deputation; and then the fees become their (the deputies')
perty.

is partly answered by the foregoing; but, in addition, it may be
that the sole nature and duty of the Marshal in relation to
kers, is that which is derived from his appointment of Registrar
brokers in Ireland, and consists in keeping a registry of their
icences and of their sureties, in the reception of their monthly or
eturns of amount of sums lent, &c., and transmission of same
ment as provided for by law, and (in lieu of appraisement) in
ce of notices upon borrowers, calling upon them as a refresher
memory to redeem pledges of a certain class remaining in pawn
the time prescribed by law for their redemption, or being kept
: and this latter duty is performed in Dublin alone, and for only
ion of the city within the boundary of the Circular-road. The fee
notice is from the sum lent of 4*s.* up to 20*s.* threepence each;
re the sum lent on the pledge is above 20*s.* fourpence each. This
notice-server makes the office of Marshal one of more emolument
of the other three auctioneers.

is the subject in which the pawnbrokers are more immediately
d. In Ireland the pawnbroker has a fee of one penny for all
here the sum lent is under 10*s.*; from 10*s.* to 40*s.*, a fee of two-
and over 40*s.*, a fee of fourpence. In England, where the charge
all those amounts, the deficiency is made up by what is known
"Wrapper Fee."

gland, before the year 1860, pawnbrokers had no fee for
s where the sum lent was under 5*s.*; and, as a consequence,
o receive pledges for sums under that amount, but rather became
rs, in preference to taking in pawns which would not be re-
ve for their labour, as well as interest for their capital.

tinginess of the law operated very much to the injury of the
ss of borrowers, who were thus obliged to have recourse to what
as a "dolly-shop" in England, and a "wee-pawn" in Scotland,
y paid four or five times as much as a Dublin pawnbroker
ed at the rate allowed by law in Dublin, accommodate them for.

CORRESPONDENCE AND RETURNS.

Letter from Mr. John Byrne, Pawnbroker, to Secretary of Commission.

It may be here stated that the difference in the interest rate England and Ireland is 5 per cent.; the charge per month, in England being fourpence; in Ireland, fivepence. And at pr wee-pawn and dolly-shops only exercise their calling in Engla times they are exercised in Ireland—viz., during Sundays, or before the hours of week-days, within which the licensed permitted to do business by the stringent, but unnecessarily so, the Acts of Parliament.

Those circumstances induced the Legislature in 1860 to am law by allowing the pawnbroker a fee for ticket for all sums un but this concession would not have been sufficient to induce the or Scotch pawnbroker to do the small business with the poorer borrowers, and thus save them from the dolly-shop but for the ex of the penny wrapper fee to this as well as the higher rated pled

This wrapper fee exists and has existed in England and Scotla the time legislation was first instituted in relation to pawnbroki was exacted for the use of a cloth or canvas covering, in which the was wrapped by the pawnbroker at the time of taking it in paw without which being consented to by the borrower, the pledge wo be received by the pawnbroker,

This proceeding was, and is, resorted to on the one hand, and acq in on the other, in consequence of the unremunerative characte scale of profit generally, and the low and unsuitable fee allow duplicates especially; this has never been in operation in Dublin.

It is to be observed upon this part of the question that a low remuneration has always prevented in England and Scotland th ence of pawnbroking establishments exclusively devoted to the lending money on pledges as in Dublin. In those parts of the k the trade of a pawnbroker is mostly, if not altogether, used adjunct to the retail of all classes and descriptions of goods—s are usually pawned, for the purpose of readily procuring st selling in such sale establishments; and thus it is the interes English or Scotch pawnbroker, precluded as he is from receivi rate of remuneration upon his pawnbroking transactions, to purchase of what is offered for pawn, and thereby be enabled t any profit he can by the retail thereof, and, as soon as he c purchasers; and this is the general practice in those places.

It was felt upon the occasions of former inquiries of a min searching character, and after many interviews with members Dublin trade, that the absence of such a system as the foregoing in was ample compensation to the poorer class of borrowers for the di in the rates of ticket-money and interest in Dublin, as compar those charges in other places, and would rather lead to the opin England and Scotland might, with advantage to the poorer clas rowers, be assimilated to Dublin. I therefore respectfully urge assimilation of Dublin, in this respect, to England and Scotland w all classes, be a disadvantageous and injurious change.

Very much stress is laid on the practice of Irish pawnbroker to the sum lent the charge for duplicate, which fee they are en receive at the time of issuing it, thereby bringing, in some instan amounts within the range of sums which, by the scale of rates, i the remuneration respectively; but, in considering this point, it remembered that the borrower is free, not to borrow any sum of may disapprove, and, as for instance, he may require the sum of present a pledge value therefor, but, inasmuch as the pawnbroke to receive the same rate for a loan of 6s. as he is entitled to receiv he will, of course, not lend the intermediate sums, and in the working of the trade the borrower assents to the addition of th

Letter from Mr. John Byrne, Pawnbroker, to Secretary of Commission.

...broker does not object to lending the intermediate sums, and ... concessions, the machine works smoothly.

... misconception is in existence regarding the profits realized ... upon the sale of forfeited pledges. Now, the fact as ... part of the case is this, ninety-five per cent. in number of the ... do not realize at sale the interest due, or, in most cases, ... : but, on the contrary, many of them realize less than the ... advanced to the borrowers, and this is accounted for by the ... amongst the trade to do a large business, as none other ... for following the trade exclusively, in all which cases ... to the Marshal, together with the auction fee of 7½ per cent., ... so much complained of as pressing on the borrower, is thus, ... by the pawnbroker out of his other profits, and which he ... by their being altogether abolished.

... to be observed in this resumé, that the fees for the duplicates ... such cases lost to the pawnbroker, as he does not get paid for ... time of pawn, but at the time when the pledge is being ... by the borrower, and, in case of sale, not at all, as above ...

... majority of pawns are for sums under 20s., and are, therefore, ... be sold if six months unredeemed; yet even in that space of ... fashion of the cut and materials of articles frequently change. ... are, in addition, not improved, but rather somewhat dete... by laying up for any period, their condition when offered as ... pledges for auction not being so good as when the sums upon ... advanced, the pawnbrokers have to submit to a loss upon their ... action, as keepers of other establishments occasionally have to do ... old or unsold stocks.

... therefore, not possible to secure to pawnbrokers a fair rate of ... tion by a scale of charges less than those at present in use in ... and it is respectfully submitted that, unless a fair rate of remune... so secured, no solvent or respectable person will continue to ... the trade, and it will naturally recede again into the position from ... 26th Geo. III., cap. 43, and the subsequent Acts rescued it, ... more particularly described by the preamble of 26th Geo. III., ... viz., into the hands of insolvent, unprincipled, and disreputable ... who, under the name of licensed or unlicensed pawnbrokers, wee ... dolly-shops, as the case might be, would be simply receivers of ... perty.

... addition of the £100 (Irish) licence fee, or a reduction of its present ... would in Dublin have the effect of calling five hundred such ... into existence, whereas the trade in its present status is regarded ... ice authorities as a material help to them in their endeavours to ... ves to justice, and to which testimony on the part of the police ..., the trade can confidently refer.

... thus endeavoured to show that a change from the present system ... rate in originating real disadvantages toward the poorer class of ..., whereas those complained of are only imaginary, and enter... ...ly from a want of due consideration of all the bearings or points ... the subject herein referred to.

... be happy to further assist the inquiry upon being made ... with the matter and manner of so doing.

I am, sir,

Your obedient servant,

JOHN BYRNE.

...C. Kirkpatrick, esq.,
...r Courts, Dublin.

CORRESPONDENCE AND RETURNS.

2.—COPY of LETTER from the SECRETARY of the Com to Mr. JOHN BYRNE, Pawnbroker.

Laws of Pawnbroking Inquiry Co
Four Courts,
April 14th

Letter of Secretary of Commission to Mr. John Byrne, Pawnbroker.

SIR,

I am directed by Dr. Hancock to request that you will accompanying table of returns of your business transactions fo 1864, and that you will deposit with him for examination th which entries pursuant to Act 26 Geo. III., c. 43, secs. 5 and made, for the year ending 31st December, 1863.

I am, sir, your obedient servant,

HENRY C. KIRKPATRICK,
Secretary to the Co

Mr. JOHN BYRNE,
Lombard-street.

Return of Mr. John Byrne, Pawnbroker.

3.—RETURN by Mr. JOHN BYRNE, of Business at his Pawnbrok lishment, Lombard-street, Dublin, for the year 1864, accord form transmitted in preceding letter.

—	Under 2s. 6d.	Over 2s. 6d.; not exceeding 5s.	Over 5s.; not exceeding 10s.	Over 10s.; not exceeding 20s.	Over 20s.; not exceeding 40s.	Over 40s.; not exceeding £5.	Lo £5 up
Number of loans issued of following amounts.	58,864	15,288	10,348	5,876	676	90	
Number of pledges redeemed in each class.	50,978	14,014	8,723	5,086	526	82	
Number of pledges in each class forfeited and sold.	7,886	1,274	1,625	790	150	8	
Shortest period in which any pledge in each class was redeemed.	One day.	One day.	One day.	One day.	One week.	Three weeks.	m
Longest period for which any pledge was left in pawn, but which was finally redeemed.	Seven months.	Eight months.	Nine months.	Ten months	One year.	One year.	On
Average period of redemption of pledges in each class.	One month.	One month.	One month.	Three weeks.	Twenty-seven days.	Twenty-one days.	m

Letter to Commissioners of Dublin Metropolitan Police.

4.—COPY of LETTER from COMMISSIONER to the COMM of DUBLIN METROPOLITAN POLICE.

Laws of Pawnbroking Inquiry
Four Courts,
April 9

GENTLEMEN,

I enclose herewith a copy of the Commission which I h from His Excellency the Lord Lieutenant, directing me to the operation of the Laws of Pawnbroking in Ireland.

It appears from the returns made by you to the Judicial S there were in 1864 thirty-seven, and in 1865 fifty-nine case against pawnbrokers for violation of the Pawnbrokers' Ac eleven and in 1865 sixteen cases against other persons fo pledging or disposing of goods; and in 1864 three cases, and case of other offences against the Pawnbrokers' Act.

I have to request that you will furnish to me a short state of these cases, with special reference to the indications they the efficiency of the Laws of Pawnbroking in Ireland, in secu contract, as regulated by statute, between the person who pa

Letter to Commissioners of Dublin Metropolitan Police.

s faithfully carried out, and in guarding against any undue r the disposal of stolen goods.

glad to receive any further information upon these points may desire to communicate, and any suggestions which your may enable you to make, of improvements by which the laws e more efficient in securing these objects.

I have the honour to be, gentlemen,

Your obedient servant,

W. NEILSON HANCOCK.

MISSIONERS of POLICE, Dublin.

Letter from Commissioners of Dublin Metropolitan Police.

of LETTER from COMMISSIONERS of DUBLIN METROPOLITAN to the COMMISSIONER for INQUIRY into the Laws of Pawn- in Ireland.

Metropolitan Police Office,
Castle, 4th May, 1866.

directed by the Commissioners of Police to transmit the wing the number of licensed pawnbrokers in the Dublin district, f which duty was paid for each of the twenty years, ending ber, 1865, as requested in your letter of the 10th ultimo, and same time, to acquaint you that they are unable to furnish d statement of the cases referred to in your letter of the 9th appearing in the Judicial Statistics for the years mentioned there are no means in this office of supplying the infor- ght for.

persons able to give the information required are the magis- s at each police court.

-nine cases enumerated against pawnbrokers, &c., were at ivilians, for detaining goods, lost tickets, selling pledges before

xteen cases under the head of unlawful pledging, &c., thirteen s charged by the police for pawning goods not their own, ses were by civilians on summons.

ining case under the head of "other offences," was a tailor l cloth to make clothes; but, instead of making same, pawned

rence to your request to be furnished with such suggestions al law of pawnbroking as the Commissioners can afford, I am nform you that the subject was very fully entered into in the on an application from the trade to the Chief Secretary for ations in the existing law.

cation in question having been referred to the Commissioners ted a report on the 24th January, 1859, which they have no would be furnished with on application to the Under Secre-

however, one matter not referred to in their report of 1859, amendation would be desirable—namely, the mode of licensing Dublin district.

rovisions of the 48 Geo. III., c. 140, secs. 60 to 70, the grant licences under the 44th Geo. III., c. 22 (local and sted in the magistrates of the Castle division (formerly termed on the necessary formalities having been gone through. At ere is no doubt the magistrates were the proper authority

CORRESPONDENCE AND RETURNS.

for the purpose, as they were until the Dublin Metropolitan
formed, at the head of the Watch Establishment, and, as
licences for carriages, carts, &c., and arranged the funds of
ment.

Letter from Commissioners of Dublin Metropolitan Police.

As a consequence of the change of system, the execut
formerly possessed by the magistrates of the Castle division, were
acts transferred to the Commissioners; but, by an oversight, the
to license pawnbrokers was left untouched. The result of th
is that, although all the preliminary proceedings, up to and
the actual filling of the licence, are performed by the Com
branch of the department, the signature must be that of
Divisional Justices of the Head Office. This state of the law
found to cause unnecessary trouble to all parties, and should
end to, by transferring to the Commissioners the legal power
these licences, as was done in respect of the other classes of li
merly vested in the magistrates.

When carrying this alteration into effect, it would be very
to empower the Commissioners to transfer licences on the dea
ment of property, or removal from the licensed premises, of
broker while licensed on the completion of new bonds when
and the payment of a reasonable fee (say £5). It would also
the trade to authorize the Commissioners to grant licences
about to enter newly into the business at a reduced rate of d
twelfth of the annual amount for each month, or portion o
unexpired, of the year commencing 26th March, for which th
run.

Under the existing law persons commencing, or succeeding to
have to pay the whole duty of £100, Irish, no matter what p
year may have elapsed, and can only obtain a refund by the t
process of memorializing the Lords of the Treasury.

The only remaining point to which the Commissioners
is connected with the wording of that portion of the sche
44th Geo. III., which relates to pawnbrokers, as the terms u
as have been found to practically preclude the formation of co
carrying on the trade in the Dublin district. The words
"For every person, or persons, who shall jointly or separately
"business of a pawnbroker, or who shall have any benefit, inte
"thereby, as a partner, or *anonymous partner* therein, within
"of the metropolis, or five miles thereof, for each and every ho
"place in which such business shall be carried on, over and abo
"whatever, £100."

Whether, in the event of an alteration in the existing law,
a limitation should be allowed to continue appears to be we
consideration.

I have the honour to be, sir, your obedient se
JAMES HANLON,

W. N. Hancock, esq., LL.D.

Report of Commissioners of Metropolitan Police to Chief Secretary of Ireland.

6.—COPY of REPORT of COMMISSIONERS of METROPOLI
to the Right Honorable Lord NAAS, M.P., Chief S
Ireland, upon the proposed changes in the Laws of P
in Dublin, referred to in preceding Letter.

24th Jan

With reference to the minute of the Chief Secretary, ref
observation of the Commissioners of Police, the annexed app
pawnbrokers of Dublin, submitted to his Lordship by a dep

they seek to have the following alterations made in the ing their trade:—

introduced next session into the Administration Bill to legalize the following hours for receiving ... 8½ A.M., to 7, P.M., and on Saturday night till 12

... 58th section of 5th Vic., c. 24. may be amended so as to ... "Pawnbroker," and so remedy a defect under which, by ... pawnbrokers are held to be excluded from receiving pay- ... advanced on goods unlawfully pawned.

... ners beg to state as to the first point—

... Pawnbrokers' Act, 28th Geo. III., cap. 49, the prescribed ... 25th March to 29th September from 10 o'clock, A.M., ... P.M.; and from 29th September to 25th March from 10 o'clock, ... o'clock, P.M.

... was passed in 1788, at a time when the system of police was ... , and the interests of the public required the limitation of ... ing business to these hours, but as an improved system of ... has developed the necessity for these restricted hours became ... and in consequence, for some years the pawnbrokers have been ... receive pledges from 8 o'clock, A.M., to 7 o'clock, P.M., through- ..., and until 10 o'clock on Saturday night, not until 12 o'clock, ... the Secretary's letter.

... with this question, it may be observed that the law does ... restriction on the trade as to the hours for the redemption ..., there not being the same necessity for controlling that branch ... iness.

... restricting the taking in of pledges to not later than 10 o'clock ... night, the convenience of a large class of poor persons is ... consulted, by confining the business from that hour to 12 o'clock ... redemption of pawns, as, if the right to take in up to the ... were given, it is not unreasonable to conclude that the prefer- ... be given to persons pledging rather than to those redeeming. ... seen from the foregoing explanation of the hours for trading ... the main points of their application the pawnbrokers of Dublin ... present moment, in as favourable a position, practically, as if ... submitted by them were passed into law. Such being the case, ... unreasonable to believe that there must be some motive not ... apparent for the request now put forward for the actual ... of the trading hours which have been so long in operation.

... the probable existence of some motive other than the ... one, the Commissioners would observe that legally the police ... authority to search for stolen property in any house or other ... as armed with a search warrant, procured on the oath of the ... as to his belief that his property is concealed there.

... cases having occurred in which a failure of justice was to be ... from the want of power to search without delay for pro- ... proved to be in the possession of pawnbrokers, applications were ... from time to time for permission to seek for articles believed ... been unlawfully pledged. It is sufficient to mention that the ... sought for was refused, and it became necessary for the Com- ... to inform the pawnbrokers that if the trade resolved to stand ... legal rights, and refused to aid the police, by allowing such special ... as might be nominated by the Commissioners for the purpose, ... stolen goods, they should not complain if the Commissioners ... the law with equal strictness, and confined them to the hours ... named in the Act as essential to the ends of justice.

CORRESPONDENCE AND RETURNS.

Report of Commissioners of Metropolitan Police to Chief Secretary of Ireland.

This intimation had the desired effect, and permission to search conceded, and it is a matter of notoriety that stolen property is frequently found in the pawn office when it is sought for.

From the foregoing circumstances, and from an extended knowledge of the business, the Commissioners are of opinion that it is not so much the benefit which might accrue in a pecuniary sense from the legal extension of the hours of business, but rather to place the pawnbrokers in a position by law to refuse the police this examination, that they seek the proposed alterations.

At the same time the Commissioners do not desire to be understood to imply that it is from any dishonest motive that the pawnbrokers seek to be relieved from the obligation thus placed upon them. They are of opinion that it is rather from a wish to save themselves or their assistants the troublesome necessity of attending to give evidence on matters brought to light, and prosecute where necessary.

In a letter of the pawnbrokers to the Commissioners, dated 11th May 1856, printed on the third page of their application, allusion is made to the extent of business transacted illegally in places denominated "duffing shops."

As far as the police can ascertain, and they have made inquiries from the pawnbrokers and others, none of such shops could be found within the district.

Taking into consideration the great facilities which the present arrangements afford for the detection of thieves and the recovery of stolen property, and the fact, admitted by the trade in the statement of their secretary, as to the extensive privileges afforded them by the police authorities, the Commissioners are of opinion that no sufficient grounds have been shown for the amendment sought for in the first proposal submitted.

With regard to the second point, the amendment of the 56th section of 6 Vic., c. 24, the Commissioners beg to state that they understood the question of the liability of the pawnbrokers to restore, free of charge, goods illegally pledged, was recently before one of the superior courts, and believed on an appeal from a decision of the Recorder.

Before coming to any decision on a subject so important to the trade it might be, therefore, advisable to have the opinion of the Law Officers on the matter in question.

N of the COMMISSIONERS of the DUBLIN METROPOLITAN POLICE, referred to in Letter No. 5.

the number of Licences in the Dublin Pawnbroking District, of which the Duty of £100 (Irish) for Pawnbrokers' Licences , for each of the twenty years ending 31st December, 1865, aggregate produce of such Licence Duties in each of the said the deductions out of the same on account of the expense of n and the application of the produce of such Licence Duty.

Number of Licences, at £92 6s. 2d. each	Total Produce in each Year.	Observations.
43	£3,969 5 2	No expense was incurred for collection of this duty, the parties licensed having always paid it direct to, or lodged it in the Bank of Ireland to credit of the proper officer accountable for the police funds.
42	3,876 19 0	
43	3,969 5 2	
46	4,246 3 8	
47	4,338 9 10	
51	4,707 14 6	The total produce in each year has been applied in aid of the maintenance of the Dublin Metropolitan Police.
50	4,615 8 4	
51	4,707 14 6	
53	4,892 6 10	
53	4,892 6 10	
52	4,806 17 2	
51	4,707 14 6	
52	4,800 0 8	
53	4,892 6 10	
52	4,800 0 8	
52	4,800 0 8	
54	4,984 13 6	
53	4,892 6 10	
53	4,892 6 10	
55	5,076 19 2	

Metropolitan Police Office,
Dublin Castle, 12th April, 1866.

(Signed), JAMES HANLON, *Accountant.*

mmission of Inquiry,
wnbroking Laws,
Four Courts, Dublin.

Letter from Secretary of Commission to Mr. Thomas Arkins, Sword-bearer.

of LETTER from the SECRETARY of the COMMISSION to THOMAS ARKINS, Sword-bearer of City of Dublin.

Laws of Pawnbroking Inquiry Commission,
Four Courts,

April 10th, 1866.

directed by Dr. Hancock to request that you will furnish him is showing :—

nature and extent of the duties in connexion with the wnbroking performed by you personally, as Sword-bearer or for the last five years.

nature and extent of the duties which you performed by deputy.

nature and amount of the fees and emoluments to which the er or auctioneer is entitled for the performance of such duties, ter, statute, or other authority by which such fees and emolu- ixed.

a true fees and emoluments which have been charged by you deputy, or other person employed by you or by any deputy, in

CORRESPONDENCE AND RETURNS.

respect of such duties, during each of the five years ending 31st D... 1865.

E.—The aggregate amount of each kind of fee or emolument ... received for each of the five years ending 31st December, 1865.

F.—By whom such fees and emoluments have respectively been r... during each of the said five years.

G.—In what manner the amount received is checked or audite...

H.—The number of persons who have, in each year, been remo... out of such fees and emoluments, with the amount received by ea... the application of the produce of such fees and emoluments.

I.—A copy of the appointment of each deputy appointed dur... last five years, and the nature of the contract between you and ea... deputy.

I am, sir, your obedient servant,

HENRY C. KIRKPAT...

Letter from Secretary of Commission to Mr. Thomas Arkins, Sword-bearer.

Thomas Arkins, esq., Sword-bearer.

9.—COPY of ANSWERS of Mr. THOMAS ARKINS, Sword-be... QUERIES in preceding Letter.

Answer of Mr. Thomas Arkins, Sword-bearer.

A.—As Sword-bearer of Dublin under the 28th of Geo. III., c... am pawnbrokers' auctioneer for the Rotundo Division. I was ap... to my office in March, 1842. Mr. William Frederick Bentley, ... been deputy to my predecessor, Mr. Finley, was confirmed in his ... ment under the Corporate Reform Bill during his life, by payi... newly-appointed Sword-bearer, namely, myself, the sum of £5 ... during his life. On the death of Mr. Bentley, on the 27th April ... appointed his son, William Wellington Bentley, with the consen... Corporation, he paying me £8 per week. Some time within the ... he surrendered the office in favour of his brother, Mr. John Bentle... I appointed my deputy, with the consent of the Corporation.

B.—Return fully answered as before.

C.—Same answer. By the authority of 28th Geo. III., cap. 4...

D.—I must respectfully refer you to Mr. John Bentley, my ... Rotundo Divisional Sale-room, Capel-street, for a full answer to t...

E.—As above.

F.—The weekly stipend has been received by me, and handed ... the Treasurer of the Corporation, from which they pay me my s...

G.—My predecessor, Mr. Finley, died in 1842; since then I ... paying the entire receipts of my office into the Borough Fund.

H.—I refer to the Treasurer of the Corporation for answer to t...

I.—There is no written contract. I merely appoint, and send ... the Corporation, who may either confirm or reject the person ... I am aware the Corporation has not the legal power to do so, ... permitted it. The appointment of Mr. Bentley was confirmed ... of the Corporation.

10.—COPY of LETTER from the SECRETARY of the COMM... Mr. JOHN BENTLEY.

Letter from Secretary of Commission to Mr. John Bentley.

Laws of Pawnbroking Inquiry Com...
Four Courts, April 11, 1866

SIR,

I am directed by Dr. Hancock to enclose a copy of th... sion which he has received from His Excellency the Lord Lieut... to request that you will furnish him with the names of the ...

who have acted for you in any part of your duties relating to
of pawnbroking during the five years ending 31st December,
of the clerks and other persons in any way employed by you
charge of such duties, together with the charter, statute, or other
which permits these duties to be discharged by deputy.

CORRESPONDENCE AND RETURNS.

Letter from Secretary of Commission to Mr. John Bentley.

I am, sir, your obedient servant,

HENRY C. KIRKPATRICK.

hn Bentley, 161, Capel-street.

PY of LETTER from MR. JOHN BENTLEY, Deputy Auctioneer, to the SECRETARY of the COMMISSION.

Letter of Mr. John Bentley, Deputy Auctioneer, to Secretary of Commission.

Rotundo Divisional Auction Rooms, 161, Capel-street,
Dublin, April 13th, 1866.

eply to your favour of the 11th instant, I beg to say that for
rs I have held the offices of Deputy to the Marshal and Sword-
f the City of Dublin for the sale of pawnbrokers' forfeited
I have carried on the business on my own account through the
sistant auctioneers, clerks, porters, &c., &c.; but I have never
leputation to another, nor would I have the power of doing so.
shal and Sword-bearer hold their offices under the Town Council
y of Dublin, and under the Act of Parliament can either carry
usiness themselves, or appoint a deputy, which latter has been
al course.

o not, I presume, require the names of my assistants whom
ve had in my employment for the last five years; but should
for them I shall have much pleasure in giving you this or any
ormation in my power.

I remain, your obedient servant,

JOHN BENTLEY.

C. Kirkpatrick, esq.

PY of LETTER from the SECRETARY of the COMMISSION to
S. GAIRDNER, esq., Controller of Stamp Duties, Inland
ue Office, asking for a RETURN with respect to PAWN-
ERS' LICENCES.

Letter from the Secretary of the Commission to John S. Gairdner, esq., Controller of Stamps, Inland Revenue.

Laws of Pawnbroking Inquiry Office,
Four Courts,

April 10th, 1866.

directed by Dr. Hancock to enclose a copy of the Commission
has received from His Excellency the Lord Lieutenant, and to
hat you will furnish him with a return for each of the five years
st December, 1865, of the number of licences in respect of which
ty has been received from pawnbrokers—

1. In the Dublin pawnbroking district;
2. In the rest of Ireland;

total produce to the Revenue from such licences in each of the
s.

I am, sir, your obedient servant,

HENRY C. KIRKPATRICK.

S. Gairdner, esq., Inland Revenue Office.

CORRESPONDENCE AND RETURNS.

13.—COPY of LETTER from JOHN S. GAIRDNER, esq., Revenue Office, to the SECRETARY of the COMMISSION, in

Letter from John S. Gairdner, esq., Inland Revenue Office, to Secretary of the Commission.

Inland Revenue, Stamps,
13th April,

SIR,

I have forwarded to the Board of Inland Revenue your letter requesting a return for the Pawnbroking Inquiry Commission. Dr. H may not be aware that since July, 1864, the pawnbrokers' licen to the Excise branch of the Revenue, and that since the abolition differential duty in 1854, those of the Dublin pawnbroking distri not been distinguished in account.

I am, sir, your obedient servant,

JOHN S. GAIRDNER,
Controller of Sta

Henry C. Kirkpatrick, esq., Four Courts.

Letter from William Corbett, esq., Inland Revenue, Somerset House, to Secretary of the Commission.

14.—COPY of LETTER from WILLIAM CORBETT, esq., Inland Re Somerset House, to SECRETARY of the COMMISSION.

Inland Revenue,
Somerset House, London, W.C.
24th April,

SIR,

Your letter of the 10th inst., addressed to the Controller of th Duties in Dublin, having been forwarded by that officer to the I Inland Revenue, I am directed in reply to transmit to you, for th mation of the Laws of Pawnbroking Inquiry Commission, the accom Return, for each of the five years ending the 31st March, 1865, of the of Pawnbrokers' licences issued in Dublin and in other districts in together with the amount of duty received.

I am, sir, your obedient servant,

WM. Cor

Henry C. Kirkpatrick, esq.

A RETURN for each of the five years ending 31st March, 186 number of Pawnbrokers' Licences issued in Dublin and other in Ireland, together with the amount of Duty received :—

Years ended 31st March.	City of Dublin and Suburbs.		Other Districts in Ireland.		Total.	
	Number of Licences issued.	Amount of Duty received.	Number of Licences issued.	Amount of Duty received.	Number of Licences issued.	A Du
		£ s. d.		£ s. d.		£
1861	52	390 0 0	516	3,870 0 0	568	4,2
1862	47	352 10 0	513	3,847 10 0	560	4,2
1863	47	352 10 0	517	3,877 10 0	564	4,2
1864	43	322 10 0	524	3,930 0 0	567	4,2
1865	50	375 0 0	569	4,267 10 0	619	4,6

(Signed), WM. CORBET

Inland Revenue, Somerset House, London,
24th April, 1866.

Letter from Secretary of Commission to the Marshal of Dublin.

y of LETTER from the SECRETARY of the COMMISSION to the MARSHAL of DUBLIN.

Laws of Pawnbroking Inquiry Commission,
Four Courts, April 11th, 1866.

directed by Dr. Hancock to enclose a copy of the Commission has received from His Excellency the Lord Lieutenant, and that you will furnish him with the names of the deputy or who have acted for the late Marshal in any part of his duties o the trade of Pawnbroking during the five years ending 31st 18 ; and the names of the clerks and other persons in any way by him in the discharge of such duties, with the Statute, Charter, authority which permits these duties to be discharged by deputy.

I am, sir, your obedient servant,

HENRY C. KIRKPATRICK.

CREAN, esq., Marshal.

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y of LETTER from the SECRETARY of the COMMISSION to the MARSHAL of DUBLIN.

Laws of Pawnbroking Inquiry Commission,
Four Courts, April 14, 1866.

directed by Dr. Hancock to request that you will furnish him register of the certificates of pawnbrokers, together with the received for the three years ending 31st December, 1865 ; also ly return for the months of December, 1863, 1864, and 1865 ; in which the monthly accounts are entered, and the abstracts prepared for Parliament in 1864, 1865, and 1866.

I am, sir, your obedient servant,

HENRY C. KIRKPATRICK.

CREAN, esq., Marshal.

Y of LETTER from MARSHAL of DUBLIN to Dr. HANCOCK.

Letter from Marshal of Dublin to Dr. Hancock.

City Marshal's Office, 10, St. Andrew-street,
Dublin, 29th May, 1866.

nsequence of my not having received the books of the late until recently, I was unable to reply to either of your communi- nd even now I can only answer two of your queries, viz. :— n Bentley, of the Stephen's-green Divisional Sale-room, was the late Marshal, Mr. Reynolds, during the five years ending 1855 ; and he can furnish the names of the clerks and others by him during that period.

Acts empowering the Marshal to appoint a deputy are the 26th cap. 43, and 28th Geo. III., cap. 49.

ard to the other returns required, they are so voluminous that of making them out would be very considerable, and for

CORRESPONDENCE AND RETURNS.

Letter from Marshal of Dublin to Dr. Hancock.

which I have no available fund. However, I shall place all containing the entries at your disposal, and my clerk (who has eight years in the office) shall attend you at any time you require any further information.

I shall be most happy to render all the assistance in my furthering the object of your inquiry.

I have the honour to be,

Your very obedient servant,

MARTIN CREAN,

Marshal of D.

W. NEILSON HANCOCK, esq., &c., &c.

Letter from the Secretary of the Commission to John Reilly, esq., and Gerald Gray, esq., District Auctioneers.

18.—COPY of LETTER from the SECRETARY of the COMMIS JOHN REILLY, esq., and GERALD GRAY, esq., District Auct asking for Returns of the Names of the Deputy Auction

Laws of Pawnbroking Inquiry Commi
Four Courts, April 11th, 1866.

SIR,

I am directed by Dr. Hancock to enclose a copy of the Co which he has received from His Excellency the Lord Lieutenant request that you will furnish him with the names of the deputy or who have acted for you in any part of your duties relating to the Pawnbroking since the date of your appointment, and of the cl other persons in any way employed by you in the discharge duties; together with the Charter, Statutes, or other authority permits these duties to be discharged by deputy.

I am, sir, your obedient servant,

HENRY C. KIRKPA

Letter from the Secretary of the Commission to the Town Clerk.

19.—COPY of LETTER from the SECRETARY of the COMMIS the TOWN CLERK, requesting information with respec Duties, &c., of the MARSHAL of the City of DUBLIN, s they relate to the Trade of Pawnbroking.

Laws of Pawnbroking Inquiry Comm
Four Courts, April 11th, 1866.

SIR,

I am directed by Dr. Hancock to request that you will fu with the following returns:—

(A.) A copy of all the minutes of the Town Council, and of th and reports of Committees, since the passing of the Municipal Co Reform Act (3 & 4 Vic., c. 108), respecting the office of Marsh City of Dublin so far as this office is connected with the trade broking in Ireland.

(B.) The amount of retiring allowance granted to any Marsh the same period, with the date of its commencement, and the time during which it was continued, and from what funds it together with the total amount paid on account of such retiring up to 31st December, 1865.

(C.) The amount of salary from time to time payable to the

...of 3 & 4 Vic., c. 108, and out of what funds paid; ...total amount paid up to 31st December, 1865.

...amount of the fees and emoluments for any duty ...pawnbroking attached to the office of Marshal, usually re... Dr. from the passing of the said Act of 3 & 4 Vic., ... and what fund at the disposal of the Town Council, with ...nt of such fees so accounted for up to 31st December, 1865.

I am, sir, your obedient servant,

HENRY C. KIRKPATRICK.

...ENRY, esq., Town Clerk.

Letter from the Secretary of the Commission to the Town Clerk.

...y of LETTER from the SECRETARY of the COMMISSION ...TOWN CLERK, requesting information with respect to the ..., &c., of the SWORDBEARER, so far as they relate to the ...of Pawnbroking.

Laws of Pawnbroking Inquiry Commission,
Four Courts, April 11th, 1866.

...directed by Dr. Hancock to request that you will furnish him ...ollowing returns :—

...copy of all the minutes of the Town Council, and the minutes ...s of Committees since the passing of the Municipal Reform Act ..., c. 108) respecting the office of Swordbearer, so far as that ...nnected with the trade of pawnbroking in Ireland.

...e amount of retiring allowance granted to any Swordbearer ...e same period, with the date of its commencement, and the ...time during which it was continued, and from what funds it was ...ther with the total amount paid on account of such retiring ...up to 31st December, 1865.

...e amount of salary from time to time payable to the Sword... ...ce the passing of the 3 & 4 Vic., c. 108; out of what funds ...the total amount paid up to 31st December, 1865.

...e return and amount of the fees or emoluments for any duty ...with pawnbroking attached to the office of Swordbearer, an... ...ceived and accounted for from the passing of said Act of 3 & 4 ...s. to any and what fund at the disposal of the Town Council, ...otal amount of such fees so accounted for up to 31st December,

I am, sir, your obedient servant,

HENRY C. KIRKPATRICK.

...ENRY, esq., Town Clerk.

...y of LETTER from the SECRETARY of the COMMISSION to Mr. ...EEGAN, Secretary of the UNITED TRADES' ASSOCIATION.

Letter from Secretary of Commission to Mr. John Keegan, Secretary of the United Trades' Association.

Laws of Pawnbroking Inquiry Commission,
Four Courts, April 26, 1867.

...Dr. Hancock to forward a copy of the commission ...year, and to state that he is desirous before closing ... of knowing whether you have any statement to make on the

CORRESPONDENCE AND RETURNS.

subject, and if so, to request that you will attend at this office on next, at twelve o'clock.

I am, sir, your obedient servant,
H. C. KIRKP...

Mr. John Keegan, Secretary to
the United Trades' Association.

Statement of the United Trades' Association of Dublin.

22.—STATEMENT of the UNITED TRADES' ASSOCIATION of ... having relation to the LAWS of PAWNBROKING INQUIRY C... SION.

To WILLIAM NEILSON HANCOCK, esq., LL.D.,

Commissioner to inquire into the Trade of Pawnbroking in Ire...

SIR,

It is with regret I feel it my duty to express on behalf of the ... Trades' Association, our dissatisfaction with the manner in which the ... into the Irish pawnbroking system has been conducted. On refe... your commission, we find that you are empowered to "summon ... amine in such form and manner as you shall deem fit, all such pe... you shall judge competent in that behalf."

You have thought in the exercise of the discretion thus c... upon you, to examine in *private*, as we are informed, witnesses o... of the pawnbroking interest. You no doubt were prepared to s... examine witnesses on the other side, but we cannot think such a... examination a satisfactory one. In a commission of inquiry as in... of justice, unless the parties are confronted, and the witnesses ... side exposed to the test of an avowedly hostile cross-examinati... can be no guarantee that the truth will be elicited.

The United Trades' Association at the outset solicited from the... ment an open investigation. That request having been refused o... nothing now remains for me on their behalf but to protest in... against conclusions (if any) which may have been drawn from... statements, made in the secrecy of a private room, in support of ... which durst not otherwise attempt to defend itself.

I remain, sir,
On behalf of the General Committee of the United Trades' Asso...
Your obedient servant,
JOHN KEEGAN, Sec...

Bakers' Hall, Bridge-street,
Dublin, 7th May, 1867.

Returns from the Marshal's office of certain abstracts of statistics as to the trade of pawnbroking in Ireland in 1843, 1844, 1845, 1864, 1865, 1866.

23.—RETURNS from the MARSHAL'S OFFICE of certain ABSTRACTS ... TICS as to the TRADE of PAWNBROKING in IRELAND, in 18... 1845, 1864, 1865, 1866.

1843.

Number of Pawnbrokers registered			491
,, ,, who have not made returns			49
Number of Tickets issued			10,517,022
	£	s.	d.
Sum lent	1,458,838	18	1...

SALES OF FORFEITED PLEDGES.

Rotundo Divisional Saleroom, 157, Capel-street, the Sword-bearer, auctioneer; W. F. Bentley, assistant	4 13,
Stephen's-green Divisional Saleroom, 12, Wood-quay, the Marshal, auctioneer; W. F. Bentley, assistant	9,
Barrack Divisional Saleroom, 152, Capel-street, Dodd and Byrne, auctioneers	12,
Workhouse Divisional Saleroom, 8, Merchants'-quay, Rodolphus Burke, auctioneer	9,
Total	44,

...m the Marshal's Office of certain Abstracts—*continued.*

Returns from the Marshal's office of certain abstracts of statistics as to the trade of pawnbroking in Ireland in 1843, 1844, 1845, 1864, 1865, 1866.

1844.

...umber of Pawnbrokers registered	467
,, ,, who have not made returns	20
...mber of Tickets issued	11,501,108

	£	s.	d.
...um lent	1,603,788	12	7½

Sales of Forfeited Pledges in Dublin.

	£	s.	d.
...ivisional Saleroom, 161, Capel-street, the Sword-bearer, ...eer; W. F. Bentley, assistant	13,457	3	4
...en Divisional Saleroom, 12, Wood-quay, the Marshal, ...eer; W. F. Bentley, assistant	8,847	4	8½
...isional Saleroom, 156, Capel-street, Dodd and Byrne, auc...	11,010	2	1
...Divisional Saleroom, 8, Merchants'-quay, Rodolphus Burke, ...eer	9,291	15	6
Total	42,606	5	7½

1845.

Number of Pawnbrokers registered	504
,, ,, who have not made returns	23
Number of Tickets issued	13,039,882

	£	s.	d.
Sum lent	1,849,757	19	8

Sales of Forfeited Pledges in Dublin.

	£	s.	d.
...ivisional Saleroom, 161, Capel-street, the Sword-bearer, ...eer; W. F. Bentley, assistant	24,082	17	1
...en Divisional Saleroom, 12, Wood-quay, the Marshal, ...eer; W. F. Bentley, assistant	12,993	1	5
...visional Saleroom, 156, Capel-street, Clarke, Dodd, and ...auctioneers	8,745	13	6
...Divisional Saleroom, 8, Merchants'-quay, Rodolphus Burke, ...eer	12,039	18	6
Total	57,861	10	6

1864.

Number of Pawnbrokers registered	563
,, ,, who have not made returns	46
Number of Tickets issued	12,982,279

	£	s.	d.
Sum lent	1,880,641	8	5

Sales of Forfeited Pledges in Dublin.

	£	s.	d.
...ivisional Saleroom, 161, Capel-street, the Sword-bearer, ...eer; John Bentley, assistant	39,333	18	6
...reen Divisional Saleroom, 12, Wood-quay, the Marshal, ...eer; John Bentley, assistant	25,794	5	0
...isional Saleroom, 177, Church-street, Gerald Gray, auctioneer; ...Fitzgerald, assistant	13,217	18	8
...Divisional Saleroom, 8, Merchants'-quay, Rodolphus Burke, ...eer	11,563	12	2
Total	89,909	14	

1865.

Number of Pawnbrokers registered	609
,, ,, who have not made returns	76
Number of Tickets issued	12,768,023

	£	s.	d.
Sum lent	1,946,822	2	10¼

CORRESPONDENCE AND RETURNS.

Returns from the Marshal's office of certain abstracts of statistics as to the trade of pawnbroking in Ireland in 1843, 1844, 1845, 1864, 1865, 1866.

RETURNS from the MARSHAL'S OFFICE of certain ABSTRACTS &c.

SALES OF FORFEITED PLEDGES IN DUBLIN.

Rotundo Divisional Saleroom, 161, Capel-street, the Sword-bearer, auctioneer; John Bentley, assistant	
Stephen's-green Divisional Saleroom, 12, Wood-quay, the Marshal, auctioneer; John Bentley, assistant	
Barrack Divisional Saleroom, 177, Church-street, Gerald Gray, auctioneer; John Fitzgerald, assistant	
Workhouse Divisional Saleroom, 8, Merchants'-quay, Rodolphus Burke, auctioneer*	
Total	

1866.

Number of Pawnbrokers registered	124
,, ,, who have not made returns	87
Number of Tickets issued	13,854,150
	£ s. d.
Sum lent	1,954,923 15 0

SALES OF FORFEITED PLEDGES IN DUBLIN.

Rotundo Divisional Saleroom,† 161, Capel-street, the Sword-bearer, auctioneer; John Bentley, assistant	£ 19
Stephen's-green Divisional Saleroom, 12, Wood-quay, the Marshal, auctioneer; John Bentley, assistant	21
Barrack Divisional Saleroom, 177, Church-street, Gerald Gray, auctioneer; John Fitzgerald, assistant	24
Workhouse Divisional Saleroom, 8, Merchants'-quay, John Reilly, auctioneer; Edward Garland, assistant	22
Total	85

I have prepared the above returns, and certify that same are
Marshal's Office, 4th June, 1867. (Signed), JOHN B

ABSTRACT of an ACCOUNT furnished by Mr. JOHN BEAHAN of th
of the MARSHAL'S OFFICE, from the appointment of the late M
March, 1842, until his death in January, 1866.

Years.	From Mr. Bentley, for Saleroom.			Pawnbrokers' Licences.			Notices.			Monthly Returns.			Tota
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
1842	195	0	0	12	3	4½	83	12	9	169	15	8½	
1843	265	0	0	9	6	0	165	5	6½	312	19	8½	
1844	260	0	0	10	6	10	183	17	0½	276	2	4½	
1845	265	0	0	15	14	8	266	1	11½	294	2	2½	
1846	260	0	0	11	6	2	401	8	8½	284	6	2½	
1847	260	0	0	5	0	0	436	16	5½	256	19	1½	
1848	255	0	0	8	5	0	320	7	1	259	13	3½	
1849	260	0	0	9	13	1	386	19	11½	222	17	0	
1850	260	0	0	9	13	11	409	15	1½	242	17	9½	
1851	300	0	0	15	4	3	461	8	6	230	12	7	1,0
1852	312	0	0	9	16	8	461	10	10	273	13	7	1,0
1853	312	0	0	10	18	10	438	0	10	277	5	6	1,0
1854	312	0	0	13	14	8	522	5	10	305	1	5	1,2
1855	312	0	0	12	14	2	487	13	5	304	7	0	1,2
1856	318	0	0	10	13	9	446	13	6½	284	1	7	1,2
1857	312	0	0	8	16	2	437	5	5½	257	5	4	1,2
1858	312	0	0	9	9	6	393	18	9	306	1	6	1,2
1859	312	0	0	10	19	7	377	10	3½	294	15	6	
1860	312	0	0	7	19	2	384	11	6½	294	3	8	
1861	312	0	0	10	5	1	405	4	7	300	16	7	1,2
1862	318	0	0	10	9	11	412	14	1	302	3	9	1,2
1863	312	0	0	8	6	8	344	0	8	304	6	7	
1864	312	0	0	10	4	10	299	1	2	306	3	3	
1865	312	0	0	10	9	5	269	5	4½	327	12	9	
1866	310	0	0	16	9	7	292	10	8	218	7	4	

* Rodolphus Burke died in the month of June, 1865; succeeded by John Reil
effected until February, 1866.

† No sales in Rotundo Division during the months of August, September, and

Letter from Alfred Keeson, esq. to Doctor Hancock.

of LETTER from ALFRED KEESON, esq., to DOCTOR HANCOCK.

Eagle Court, Dean-street, Holborn,
28th January, 1868.

have done me the honour to ask my opinion upon several
connected with pawnbroking in England, and particularly with re-
are termed "Dolly-shops," or contraband dealers in pawns
value, as also for some particulars of the small-pawn traffic
is, Amsterdam, I will venture to trouble you with the
marks. 1st. As to the Dolly-shops in England. The Act 19 & 20
passed for the purpose of repressing this traffic, by bringing
practised it under the regulation of the Pawnbrokers Act,
an utter failure. Neither has the 23 Vic., c. 21 (popularly
Halfpenny Act), passed by the Legislature, partly with the
that by making small pledges more profitable to the receiver,
would be superseded by the legitimate trade, had any material
that direction. To some extent there has been an increase in the
of the regular trade, particularly in the country, but not, I believe,
to have any effect upon the Dolly-shops; neither have any appre-
portion of the latter been induced by the extra halfpenny to
responsibility of legal traffic; a few have done so, but they are
few. From all that I have seen of this matter, I incline to believe
very small value of the goods received by the Dolly-shops, and
disagreeable conditions connected with such a poverty-stricken
to establish a kind of natural division between it and the
ing trade contemplated in the Act of Parliament. The man of
capital cannot bring himself to meddle with so degraded a kind
while the small amount which the Dolly-shop keeper can com-
bids his embarking it upon anything approaching to the
terms of pawnbroking. I may here observe that all the
tal Monts de Piete, have a minimum point below which they make
ces. This is generally somewhere about 2*s.* or 2*s.* 6*d.* of our
And here I come to—2nd: The small-loan system of Amsterdam.
e say that my information upon this subject is chiefly derived
per contributed by M. Blaize, formerly director of the Mont de
Paris, to a report upon the administration of the charitable pawn-
nstitutions of France, addressed by M. de Watteville to the Minister
terior, in 1850. The system pursued at Amsterdam may be thus
dicated.

small-pawn-offices are an off-shoot from, and are licensed by, the
niaard (pawnbroking) Bank of the city, from which their opera-
e totally distinct. They are limited to loans not exceeding
. In their books they are required to enter, opposite to a
ive number, the date of the pledging, a description of the article,
amount lent. There is also a column left for the date of redemp-
and it take place: if not, a tick in this column signifies the for-
The name and address of the pawner is not taken. The ticket
uplicate bear only the number of the "small-pawn office" (there
six sixty at the time the report was compiled), the consecutive
of the pledge as entered in the book, the date, and sum lent.
ale of profit is—

Loans of 30 c. (the minimum) to 40 c.	.	3 centimes.	
" "	60 c.	.	4 "
" "	80 c.	.	5 "
" 1 fr.		.	6 "
" 1 fr. 20 c.	.	.	8 "
" 1 fr. 40 c. (the maximum)		.	9 "

CORRESPONDENCE AND RETURNS.

etter from Alfred Kerson, esq. to Doctor Hancock.

Pledges are kept for three months, the whole of which term is cover the above fees; there is no reduction in these latter, should the s be redeemed within that time. At the end of the three months the p may renew the transaction for three months more by paying a fee to those set forth above. The final sale of the unredeemed or newed takes place at the end of the fourth month, during which the has the privilege of redeeming upon payment of double fees. No a of those sales is required to be kept or rendered.

You also asked my opinion as to a modification in the existing of forfeiture. I see that under the Irish Acts you have different t regulated according to the amount of the loan. I do not think that a system would be so good as one regulated by the nature of the ar pawned. Plate, jewellery, or mathematical instruments would h suffer in value by being kept for twelve months, but clothes and woo do. They are liable to injury from lying by closely packed, for so a time, and from changes of fashion also. Again, it is common for w clothing to be pledged at the commencement of summer, and if twelve months and becomes forfeited it will go for sale at the period such goods are least in demand. Summer clothing, pledged a beginning of winter will, if forfeited, be subject to a similar depreci It seems to me, therefore, that if different terms of forfeiture are maintained, it would be better that the six months should be appl clothes (instead of to pledges indiscriminately upon which 20*s.* and has been lent), which would then, if forfeited, go for sale just when would be most marketable.

You wished to know how the "police list" of stolen property has w I believe that it answers very well in small provincial towns; but metropolis it to a great extent neutralizes its own value by its volum ness. Amongst an enormous population, like that of London, the n of thefts is so large that, I believe, the police list contains a hu or two of articles daily, (few of which, by-the-bye, are ever described), and the consequence is that in a very short time th becomes too unwieldy for any practical system of reference. This ever, opens up what I believe to be one of the chief grievances pawnbroker, viz.:—his position when he has innocently becom receiver of stolen property. The proportion which such cases bear general dealings is exceedingly small. The police of Liverpool, som ago, compiled a tabular account of all these cases that came under thei vation within a given time, and when the number came to be compare that of the pledges taken in by the pawnbrokers during that period found that the proportion was but about 1 in 10,000 transactions. lations which have been made by the pawnbrokers themselves up point have been found to agree very nearly with the Liverpool statis do not suppose that upon the average, London pawnbrokers of the o class have to give up above £2 or £3 worth of articles during th The very large capitalists, of course, suffer more severely. Th however, a constant source of irritation arising out of this mat from the loss, but from the obloquy which these transactions in the Courts tend, in many cases, to bring upon the trade, who seldom appear before the public upon any other grounds. When it is con that each London pawnbroker receives upon the average from 60 70,000 pledges yearly, even the proportion of 1 out of 10,000, w body of over 400 cause these attendances in the Police Court to b numerous when regarded in the aggregate. The pawnbroker has, cases (in the Liverpool calculation it was stated that in about one- them it was the pawnbrokers who had called in or furnished the i tion to the police), not merely to give up the goods at the loss of the he has advanced, but is frequently censured by the court for a c

Letter from Alfred Keesen, esq. to Doctor Hancock.

he feels that he is not guilty. As you are very well aware, the law gives the police a certain power of surveillance over the pawnbrokers of that portion of the United Kingdom, and in England there have been local attempts to obtain similar powers. But the attempt has been invariably repelled, the pawnbroker here regarding such a control as a gross indignity, and I have repeatedly heard many of the capitalists say that were such a system established here they would give up pawnbroking (under the Act), and confine their dealings to pledging above the £10 limitation. I fully believe that placing pawnbrokers in any way under police supervision would result in bringing a lower class of persons into the trade. It would feel itself placed under a kind of stigma, and when we consider the eminently confidential character of the better class of pledging, it does not seem desirable for the character of the pawnbroker to be subjected to the examination of a police officer, for the sake of tracing one transaction out of 10,000. But it is desirable that there should be a good understanding between Justice and the man who can so materially aid her interests. I think this might be effectively if the statute were to direct that in all cases where the pawnbroker voluntarily produced stolen property, or set the police in action, he be repaid his advances by the owner, who will thus recover his property at a small sacrifice. This is the rule in all Continental countries where Monts de Piete are in operation, but here, in England, the pawnbroker is compelled to restore goods unlawfully pawned without repayment, and generally with hard words into the bargain.

There is another difficulty arising out of the existing statute that might, I think, be remedied with advantage, and that is, the intricacy of calculations introduced here by the third section of the 39 & 40 Geo. III., c. 99. This relates to profit for fractional parts of a half-crown, or, as they are popularly termed, "intermediate sums." The amount gained for the trouble in these cases is practically very small, while they are a great source of trouble and misunderstanding. Probably not one person in a thousand can calculate what 20 per cent. should be upon a loan of 4*s.* 6*d.* for 3 months. I believe it will be found to be about 2¼*d.*; while calculating by the half-crown gradation it would be 2½, giving a small increase of profit to the pawnbroker, which he well deserves.

I now come to the last question upon your list—"Free Trade" in profit on money-lending under the Pawnbrokers Act. I formerly entertained decided opinions in favour of it, and, even now, can hardly say that those opinions are changed. But still several circumstances have led me at times to modify them. The principal of these is, the fact that in the only instance I have heard of, in which it has had a fair trial, it appears to have failed. In the colony of New South Wales the Legislature passed an Act for regulating the Trade of Pawnbroking. When I received a copy of it some years ago, I considered it—allowing for some local peculiarities—a model statute. In it perfect free trade as to profit and time of redeeming a pledge, was the rule. It was passed in 1849, but in 1861 the Colonial Legislature saw fit to repeal it and to pass another Act, very much on the English model. I have no information as to the working of the latter statutes, but the inference is certainly unfavourable to free trade principles. There have also been two statutes passed in England since the year 1859, which have materially improved the pawnbroking law. The first of these is the 22 and 23 Vic. c. 14 (the Mitigation of Penalties Act), by which the old minimum penalty of 40*s.* for any offence, however trivial, was abolished, and the matter left in the discretion of the magistrate to reduce the fine to a farthing if he considered the case one that called for no substantial penalty. This provision had already been in force in Dublin, and some other large towns which had a Police Act of their own. The other is, the 23 Vic., c. 21, (the Halfpenny Act), which has certainly been a great benefit to those pawnbrokers who are not engaged in the

Letter from Alfred Keeson, esq. to Doctor Hancock.

highest class of trade. It has ameliorated many of the evils which to be formerly complained of. In Ireland you have a fee of one penny the tickets for small loans; and, I understand, that you are disposed attribute the absence of Dolly-shops there to that cause. Returning to the point with which I started, I must say, that the half-penny seems to have no appreciable influence upon the illegal traffic. has not received the expected increase in the number of its brokers since the passing of that Act. From 1830 to about there were seldom many more or less than 360 licensed traders the metropolis. There are now, I believe, about 450, but consider the vast increase in the extent of London and of its population this number must be taken rather as a retrogression than as an increase. But if there has been so little increase of the trade in London, there is but one pawnbroker to about 6,000 inhabitants, I believe there has been something of an increase in the provinces. Liverpool as nearly as I can ascertain, one to about 2,200, and Manchester about 1,400 inhabitants. This difference is, I believe, greatly attributable to the circumstance, that the business can there be carried on with much smaller capital than in London. But yet I do not think either of these last-named towns the licensed has materially superseded contraband traffic. I believe that the non-expansion of the trade metropolis arises from several causes. 1st.—The business is one requiring a very large capital. Few can manage with less than £3,000, others again have as much as £40,000 or £50,000 embarked. Practically the general run is about £6,000 or £8,000. This is a large sum to put into a business, which really returns, as compared with other retail trades, but a very small profit, and in which the proprietor cannot, as in other trades, magnify his actual capital by the operations of credit. I have heard of a pawnbroker making a rapid fortune as some other men do, but profits are smaller than those of ordinary retail trade; they are, however, slow but sure (if he is a master of his business); his book-keeping must be exact, and all his operations extremely systematic. Beginning a rich man he can hardly fail to end as a richer one; but he must work hard and with much judgment to avoid going behind-hand. 2nd, The trade is one that receives very few recruits from outside, neither do the latter generally appear to prosper.

With respect to that modified form of free trade which you mention to me, viz.—That while the conditions laid down in the Pawnbroking Act should be taken as forming an "implied contract," where no special arrangement was entered into, the parties should be permitted, when the circumstances required it (particularly in respect to furniture), to enter into "special agreements," in the same manner that is now done when the loans exceed £10. I believe that this would be an excellent improvement, provided it could be guarded against abuse. You rely on competition as a safeguard. But pawnbroking is a peculiar trade, eminently confidential in its nature, and the demand for its accommodation is often very limited. In large towns there would be always plenty of competition, but there are many of the smaller ones, towns of 10,000 to 12,000 inhabitants, which will hardly support more than one or two pawnbrokers. In many cases a single member of the trade will have a competitor within a dozen miles. Nevertheless, I think your plan solves most of the existing difficulties, and that its adoption would be beneficial to the poor who are now unable to pledge their furniture, because the ½*d.* per month on 2*s.* 6*d.* fails to cover the value of warehouserage. tables, chairs, and bedsteads, which have now to be sold outright, generally for less than the pawnbroker would lend.

I remain, dear sir, yours very faithfully,

ALFRED KEESON.

To Dr. Neilson Hancock.

REPORT

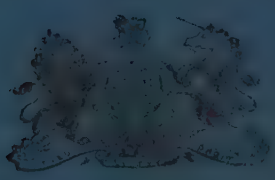
OF THE

Commissioner Appointed to Inquire

INTO

THE LAWS OF PAWNBROKING IN IRELAND.

Presented to both Houses of Parliament by Command of Her Majesty.



DUBLIN:

PRINTED BY ALEXANDER THOM, 87 & 88, ABBEY STREET,

FOR HER MAJESTY'S STATIONERY OFFICE.

1868.

RAILWAYS (IRELAND) COMMISSION.

REPORT

OF

HE COMMISSIONERS APPOINTED TO INSPECT THE ACCOUNTS AND EXAMINE THE WORKS

OF

RAILWAYS IN IRELAND,

MADE TO

THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1868.

[30178.]

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Treasury Minute appointing Commission.

Dated October 15, 1867.

My Lords have under consideration the several Reports of the Royal Commission on Railways (19th December 1865), so far as they relate to railways in Ireland, and my Lords read the Act 30 and 31 Vict. c. 104.

It is stated in the Act that the Commissioners of Her Majesty's Treasury may call for an account of all monies received and paid by any railway company in Ireland during a period of three years previous to the date of the last half-yearly account; and also an account of the assets and liabilities at such time or times during such period as the said Commissioners shall specify; and further, that it shall be lawful for them to appoint any proper person or persons for all or any of the purposes following, that is to say:—

To inspect the accounts and books of any railway company in Ireland during such period of three years;

To examine the railway stations, works, &c., of any railway company in Ireland, with power to call for documents, and examine on oath.

My Lords do not deem it necessary at present to enter upon the large and important questions raised in the Reports under consideration, namely, whether it is expedient that measures should be taken for the purchase by Government of the Irish lines of railway, with a view to either leasing them or working them.

Previous to the consideration of so important a question, such an inquiry as that which is provided for in the Act of last Session as regards the present financial position of each company, of the state of the rolling stock, and the condition of the permanent way is obviously essential.

My Lords have already, by their Minute of October 14, directed every railway company in Ireland to furnish to this Board such accounts as are mentioned in the Act, and they are of opinion that such an investigation as is above referred to can be most usefully conducted by a Commission, under the authority of the said Act, consisting of gentlemen having financial, mercantile, and railway experience, with the assistance of a Secretary.

It is to be understood that it will be the duty of the Commission to obtain full information as to the position, prospects, and value of such railways.

Their Lordships will cause the accounts of the several railway companies, as soon as rendered, to be supplied to the Commissioners, and it will be incumbent upon them to examine and verify such accounts, with a view to ascertain the income and expenditure of each railway company in each year, and its assets and liabilities at the end of each year.

For ascertaining the assets, an inspection should be made of the line, buildings, and works, to compute the time requisite to put them in such good order and repair as will enable them to earn the estimated income, with only the estimated annual outlay for repairs and restoration. The rolling stock should also be valued.

The income of each year should be analysed to ascertain how much arose from gross profits, and how much from capital, loans, or other sources.

The expenditure of each year should also be analysed to ascertain how much ought properly to be charged to capital, and how much, being for ordinary wear and tear, and repairs and restorations likely to recur from time to time, should be deducted from gross profits in estimating the net divisible profits contemplated as the basis of purchase under the Act of 1844.

In conclusion the Commissioners will understand that the inquiry is to include all the Irish railways, whether completed or not, and to be directed to all the facts which the Commissioners may consider that a prudent person or company would require to be made acquainted with as a preliminary step towards entertaining the question of purchase as a commercial speculation.

My Lords are pleased to appoint the following gentlemen to be the Commissioners:—

Sir Alex. Y. Spearman, Bart.
John Mulholland, Esq.
John Fowler, Esq., C.E.
Seymour Clarke, Esq.
and Christopher Johnston, Esq.;
and W. Neilson Hancock, Esq., LL.D., Secretary.

Transmit a copy of this Minute to each of the Commissioners and to their Secretary, and to the Irish Government, together with copy of the Minute of October 14 on the same subject. Let a copy of this Minute be also sent to each Railway Company in Ireland.

REPORT.

Lords,

On receiving the instructions conveyed to us in the Treasury Minute dated the of October 1867, we proceeded to take the measures which after careful con- ation we deemed to be best for collecting the requisite information to enable us to rt on the railways of Ireland, especially having reference to the last comprehensive graph of the Minute, viz.: Supra, p. 4.

In conclusion the Commissioners will understand that the inquiry is to include all rish railways, whether completed or not, and to be directed to all the facts which Commissioners may consider that a prudent person or company would require to nade acquainted with as a preliminary step towards entertaining the question of hase as a commercial speculation."

nder a subsequent Treasury Letter, dated the 1st of November 1867, such of the canal panies as were willing to submit their affairs to the Commissioners were included in nquiry. Appendix, Part II., p. 33.

careful study of the Treasury Minute, combined with our general knowledge British and Irish railways, and the varied manner in which their accounts were kept, led to the conclusion that it would not be possible to carry out our instructions in nner useful to the Treasury or satisfactory to ourselves unless an independent ction were made of the condition of the permanent way, works, stations, and rolling as well as of the accounts and financial position of every railway, so as "to obtain ll information as to their position, prospects, and value;" and also, as far as applicable, nilar inspection of every canal.

was evidently impossible that we could have personally completed such an examination y reasonable period, even if we had been prepared to devote our entire time to the work this from the constitution of the Commission would have been impracticable); it fore became necessary to organize a thorough examination into the state of the ays, the canals, and the accounts, by a staff of experienced Engineers and Accountants idually known to ourselves.

ur first step was to prepare forms of returns to be sent to each Company, so as to n (in addition to the information required of them by the Treasury Minute of the of October 1867) such particulars of their respective properties and accounts as were r opinion an essential preliminary to our examination. Appendix, Part II., p. 33.

nese returns were unavoidably elaborate, and their preparation involved considerable ar to the companies, (especially to those smaller companies whose accounts were cept in a way to enable them easily to extract such details,) but in all cases, both in illing up of the returns, and in our personal examination of works and accounts, we uniformly received from Directors and Officers the most cheerful assistance.

hen we state that considerable portions of the rails, sleepers, fastenings, and ballast very mile of railway in Ireland, every station and repairing shop (with their tools), y every locomotive engine, and a large proportion of the carriage and wagon , were critically examined by the Engineers, and the accounts and books for the last years by the Accountants, it will be readily understood, that in saying that we been met in an excellent spirit by the companies, much more is implied than re formal compliment.

though such an inspection of the lines of railway, examination of accounts, and sis of expenditure and income as we have indicated, were contemplated in the sury Minute, and were obviously essential to the proper performance of the duties sted to us, we believe that neither the Treasury, ourselves, nor the companies were ared for the amount of detailed labour which has been required for their complete zation.

A considerable delay has taken place in the completion of the returns of some of the companies, and we may also say that our own work and the time occupied in preparing this report have been considerably increased, by the want of a correct and uniform system of accounts and of a recognized mode of dealing with capital and revenue expenditure, renewal funds, and suspense and stores accounts.

The many disadvantages of this variety of practice have been strikingly forced upon our attention during these investigations, as it was not only difficult to ascertain the profits actually earned by any individual company, but any comparison was impossible without a laborious analysis.

After sending out to each railway company a set of tabular forms, to be filled in from their own books, we proceeded to Dublin and Belfast, and invited the attendance of the Directors and chief Officers of the several railway and canal companies, in order to explain to them the particulars of the inquiry intrusted to us, to ask their co-operation and to discuss with them the papers we had sent, so that we might avoid giving unnecessary trouble, in cases where their books rendered it more easy for them to furnish the information under a slight modification of our forms.

These interviews were very useful, and they enabled us to commence operations in the most satisfactory manner.

The work of detailed inspection divided itself, naturally, into three heads—

1st. Permanent way, structural works, stations, and the sidings of all railways completed and working; the condition of railways commenced and not completed; canals and works connected with them.

2nd. Rolling and working stock, including locomotive engines, carriages, wagons, steam boats, barges, machinery, and tools in the workshops.

3rd. Examination of accounts during the past three years, including such an analysis as to ascertain with accuracy, the receipts and expenditure, the financial position and true net divisible profits.

1.—*Permanent Way.*

For the purposes of the inspection of the railways, Ireland was divided into five divisions, and two inspecting Engineers were appointed to each.

Forms were supplied to each Engineer to enable him to note down in an exact manner the condition of all the works of the railway, including the state of the rails, sleepers, materials in store, slopes, ballast, road approaches, bridges, tunnels, signals, drainage, gas and water supply, sheds, tools, and workshops.

The examination of the permanent way, (rails, sleepers, and fastenings, &c.) for a portion of each mile of line, and of the actual condition of all other works, necessarily involved great labour, but it did not appear to us that a less thorough examination would suffice.

The inspecting Engineers have obtained for us returns of the nature of the permanent way, the steepest gradients, and the quickest curves of each railway, with plans of stations and sidings.

The object of collecting this great mass of information was to enable us, after personal inspection and careful analysis, to arrive at a fair and just conclusion as to the condition of each railway, having reference to the nature and extent of its traffic, and all the circumstances affecting it, and to determine the value of the difference (if any) between its actual condition and a proper state of efficiency.

2.—*Rolling Stock.*

Full returns were obtained from the railway companies of the number and description of their engines and other rolling stock, the cost of repairs, renewals, and running charges, and the mileage run by locomotive engines, during the three years named in the Treasury Minute.

Inspecting Engineers of special experience were selected to make examination of the rolling stock, tools, and machinery. For this purpose the Railway System of Ireland was divided into three parts, and two or three inspecting Engineers appointed to each part.

In this branch of the inquiry two things were requisite. One to make a valuation of the rolling stock, the other to ascertain whether it had been kept up in a proper state of repair, so as to enable us to determine the value of the difference (if any) between the condition of the stock and such proper state of efficiency.

'o accomplish these objects it was decided that a detailed examination of every motive engine should be made, and an equally detailed examination of about 30 per . of the total number of carriages and wagons; and, in the case of locomotive nes, the quality of the coal, coke, and water (influencing the duration of boilers, tubes, fire-boxes,) were carefully noted for our consideration and any other special circumces affecting the rolling stock.

3.—*Inspection and Examination of Accounts.*

staff of Accountants was appointed to make a thorough investigation of the books accounts of every company for the three years embraced in the Treasury Minute.

t. For all railway and canal companies having their head offices in Dublin and the south of Ireland.

d. For all companies having their head offices in the north of Ireland.

d. A central department in London for such of the companies as have their head offices in London; for the general superintendence of the other divisions, and for working out under our immediate directions the final results, from the information obtained.

he published accounts for the past three years, furnished by the several companies r the Treasury Minute of the 14th of October 1867, were subjected to a thorough ination, and we were thereby enabled to direct attention to those points requiring ial consideration. Appendix, Part II., p. 33.

or the purpose of securing uniformity in the results a set of forms (27 in number) drawn out so as to obtain the following information,—

t. The different descriptions and amount of share and loan capital authorized, raised, and remaining unissued.

d. The capital expenditure under various heads at the commencement of the period of three years, or (in the case of new lines completed within that period,) at the commencement of their carrying traffic, and the additions made to each head during the half year.

d. The revenue receipts and expenditure for each of the six half years embraced in the three years' period, shewing the net balance for that period after payment of all expenditure, other than interest and dividends.

h. The balance sheets of floating liabilities and floating assets, at the date of each half-yearly balance during the three years' period.

h. The particulars of leases or working agreements between railway companies, and of all other agreements, and any information of a general character bearing on the inquiry.

he companies have almost without exception filled up with great care the forms which supplied to them, and have in every way facilitated the work of the Accountants.

fter the information, as above described, had been obtained and carefully checked analyzed, the results of our examination of the permanent way and works, rolling , and accounts, were applied, and statements therefrom were prepared, shewing the nt financial position of each of the companies, and their true net annual revenue.

e felt it to be our duty personally to travel over and examine every part of the ay system of Ireland, to confer with our inspecting Engineers and Accountants on spot, and to give special instructions to them as new questions arose, and also to ct carefully every work of importance or anything requiring our personal attention.

doing this, we have received every facility from the several companies, and the st candour was evinced by all the Officers with whom we were placed in communin.

e have prepared a new map of Ireland founded on the Ordnance Survey, to accom- this report, shewing railways and canals, whether constructed or authorized, and cility of reference we have had engraved upon it an alphabetical list, with their al lengths. To follow p. 178.

e give in the Appendix to this Report a description of each railway, shewing the th of the undertaking and its branches, the Acts of Parliament under which they sanctioned, the capital authorized and raised, the dates of opening for traffic of the Appendix, Part II., p. 42.

several railways, the dividends on ordinary and preference shares, the interest on t different classes of borrowed money, the floating assets and liabilities, and the area a population of the district of country which may be considered as accommodated by ea railway.

ppendix, 42. For the purpose of more conveniently describing the railways of Ireland, and givi the result of our inquiries respecting them, we have divided them into three general hea or classes, and in doing so we have treated railway companies whose powers have be allowed to expire as if not in existence:—

			Miles.
d., p. 42.	Class I. Railways authorized but not commenced.	(Table A.) -	339¼
d., p. 54.	Class II. Railways commenced but not completed.	(Table B.) -	252
d., p. 69.	Class III. Railways completed and carrying traffic.	(Table C.) -	1,908¼
		Total - -	2,499½

Table A.

No. in Appendix and on Map.		Railways, Class I.—Authorized but not commenced.	Length of Li authorized.	
Main Lines.	Branches and Extensions.		Miles.	Tot Mile
		1st.—*Lines not commenced.*		
1.		Bray and Enniskerry - - - - - - - -	3½	
2.		Central Ireland (Maryborough to Mullingar) - - - -	36	
3.		Clonmel, Lismore, and Dungarvan - - - - -	38	
4.		Dublin Metropolitan (in the City of Dublin) - - - -	2½	
5.		Dublin, Rathmines, Rathgar, Roundtown, Rathfarnham, and Rathcoole (Dublin to Poulaphuca Bridge) - - - - - -	24	
6.		Dundalk and Greenore (Co. Louth) - - - - -	13	
7.		Limerick and North Kerry (Newcastle to Listowel) - - -	23	
8.		Navan and Kingscourt - - - - - - -	20	
9.		Sligo and Ballaghaderreen (Kilfree Junction to Ballaghaderreen) - -	9½	
10.		Waterford, Lismore, and Fermoy (Waterford to Dungarvan, and Lismore to Fermoy) - - - - - - - - -	42½	
11.		Waterford and Passage (Ballytruckle Junction to River Suir, at Passage) -	9½	
12.		Waterford and Wexford (Ballyhack to Wexford and Greenore, Co. Wexford)	33¼	
		Length of lines not commenced -		254¾
		2nd.—*Branches and Extensions not commenced belonging to lines (included in Class II.) commenced but not completed.*		
	21 *a.*	Meelick Extension of the Midland Counties and Shannon Junction Railway (Banagher to Meelick) - - - - - -	5¾	
	24 *a.*	Collieries Branches of the Southern (Graystown Junction to the Collieries) - - - - - - - - -	9½	
	25 *a.*	Waterford Extension (Ballywilliam to Waterford) } of Waterford, New	19	
	25 *b.*	Ballyhoge Branch (Ballywilliam to Ballyhoge) - } Ross, and Wexford	14¼	
		Length of branches and extensions connected with railways in Class II., but not commenced - - - - -		48½
		3rd.—*Branches and Extensions not commenced, belonging to lines (included in Class III.) completed and carrying traffic.*		
	39 *e.*	Kingstown connecting branch of the Dublin, Wicklow, and Wexford -	2	
	44 *a.*	Sligo Extension of the Enniskillen, Bundoran, and Sligo - -	23	
	50 *b.*	Ballina Extension } of the Great Northern and Western -	9¼	
	50 *c.*	Westport Quay Extension }	1¾	
		Length of branches and extensions connected with railways in Class III., but not commenced - - - -		36
		Total mileage authorized but not commenced -		339¼

The total share and loan capital authorized for the railways in the first division of th above table (254¾ miles) is 3,245,900*l.*

The capital for the uncommenced branches and extensions of lines, in the second an third divisions of the above table, forms part of and is included in the capital of the mai lines, Tables B. and C. (Classes II. and III.), of which they severally are branches.

rom local and other information we have obtained there appears to be little probability he above railways (Table A.), or at least the greater part of them, being carried out er their existing powers, and although their completion would be a public convenience, very doubtful whether they would be profitable to their shareholders, and in the ent collapsed state of railway enterprise, it is not probable that capital could be ined for their construction.

Table B.

Table BB. Appendix, p. 22.

in Appendix nd on Map. Extensions and Branches.	Railways, Class II.—Commenced but not completed.	Length of Line authorized and in part commenced. Miles.	Total Miles.	Estimated Cost of completing the Railways, and providing Rolling Stock.
	1st.—*Lines where after some expenditure has been made the Works are at a standstill.*			
	Banbridge Extension (Banbridge to Ballyroney)	9¾		
	Dublin and Antrim Junction (Knockmore Junction to Antrim)	18½		
	Kilrush and Kilkee	8½		
	Letterkenny (Letterkenny to Farland)	16½		
	Midland Counties and Shannon Junction (Clara to Banagher)	17¾		
	Southern (Thurles Junction to Clonmel)	24		
64 *a.*	Skibbereen Extension of the West Cork	16		
			111	
	2nd.—*Lines which may be expected to be completed by the Companies to which they belong.*			
	Athenry and Ennis	35¾		
	Belfast Central (in the town of Belfast)	3		
	Downpatrick, Dundrum, and Newcastle (Co. Down), (Downpatrick to Newcastle)	11		£ 782,344
	Parsonstown and Portumna Bridge	12½		
50 *a.*	Foxford Branch of the Great Northern and Western	11½		
59 *a.*	Shannon Extension of the Limerick and Castleconnell	¾		
			74½	
	3rd.—*Line closed for three years which would require to be put in order before being re-opened.*			
	Waterford, New Ross, and Wexford (Bagnalstown to Ballywilliam)		20¾	
	4th.—*Line incomplete at the period named in the Treasury Minute, but since opened for traffic.*			
57 *a.*	Maryborough Extension of the Kilkenny Junction (Abbeyleix to Maryborough).		9½	
	Total mileage in Divisions 1, 2, 3, and 4		215¾	
	5th.—*Lines where only a small amount of Work compared with the entire Undertaking has been executed.*			
	Dublin Trunk Connecting (in the City of Dublin)	7¼		
	Newry and Greenore (Co. Louth)	14		
39 *d.*	Wexford Extension of the Dublin, Wicklow, and Wexford	15		
			36¼	
	Total mileage commenced but not completed		252	

e have not been able to collect evidence which would enable us to report with uracy upon the value of the land which has been acquired or of the works which have n constructed in connexion with the lines forming the first four divisions of the above le, but we have prepared an estimate of the amount which would have to be expended complete the works and provide rolling stock, and have given it in the last column of ble B.

e have included the line from Bagnalstown to Ballywilliam in this class, because e the bankruptcy of the Bagnalstown and Wexford Railway Company, it has been sed for three years, and it would have again to be put into proper order before it ld be safely used.

e have not made an estimate of the cost of completing the lines in the last division he table, inasmuch as, only a very small amount of work having been executed, they almost in the same position as lines authorized but not commenced.

TABLE C.

No. in Appendix and on Map.	RAILWAYS, CLASS III.—COMPLETED AND CARRYING TRAFFIC.	Mileage.		
		Single.	Double.	Total.
26	Belfast and County Down	44¼	—	44¼
27	Belfast, Holywood, and Bangor	12¼	—	12¼
28	Belfast and Northern Counties	92½	6¾	99¼
29	*Carrickfergus and Larne*	15½	—	15½
30	*Londonderry and Coleraine*	35¾	—	35¾
31	Cork and Bandon	20	—	20
32	*Cork and Kinsale*	10¾	—	10¾
33	Cork, Blackrock, and Passage	6¼	—	6¼
34	Cork and Macroom Direct	23¾	—	23¾
35	Dublin and Belfast Junction	—	55½	55½
36	*Banbridge Junction*	6¾	—	6¾
37	Dublin and Drogheda	43	31¾	74¾
38	Dublin and Meath	35½	—	35½
39	Dublin, Wicklow, and Wexford	86½	12	98½
40	*Dublin and Kingstown*	2¼	6	8¼
41	Great Southern and Western	228½	190¼	418¾
42	*Cork and Limerick Direct*	17¼	—	17¼
43	Irish North Western	86¼	—	86¼
44	*Enniskillen, Bundoran, and Sligo*	35½	—	35½
45	*Finn Valley*	13¼	—	13¼
46	*Londonderry and Enniskillen*	50¼	9¾	60
47	Londonderry and Lough Swilly	14¾	—	14¾
48	Midland Great Western	131	115½	246½
49	*Athenry and Tuam*	15¼	—	15¼
50	*Great Northern and Western*	82¾	—	82¾
51	Newry and Armagh	21	—	21
52	Newry and Warrenpoint, including connecting Line	6¼	—	6¼
53	Ulster	16	48½	64½
54	*Banbridge, Lisburn, and Belfast*	15	—	15
55	*Portadown, Dungannon, and Omagh*	41	—	41
56	Waterford and Kilkenny	29	—	29
57	*Kilkenny Junction*	19	—	19
58	Waterford and Limerick	53¾	23½	77¼
59	*Limerick, Castleconnell, and Killaloe Extension*	13	—	13
60	*Limerick and Ennis*	24	—	24
61	*Limerick and Foynes*	25½	¾	26¼
62	*Rathkeale and Newcastle*	10	—	10
63	Waterford and Tramore	7¼	—	7¼
64	West Cork	17½	—	17½
	Total	1,408	500¼	1,908¼

Lines leased or worked by other companies are marked in italics, immediately below the name of the company by which they are worke

The 39 railways under this head constitute by far the most important class. The possess a total length of 1,908¼ miles, completed at a cost of 27,527,286*l.*, being on th average 14,425*l.* per mile.

In calculating the value of these railways, in their present condition, we found tha our mode of proceeding was very clearly indicated by the Treasury Minute of th 15th of October 1867, and by the terms of the Act of Parliament of 1844. Th Treasury Minute particularly instructed us to analyse the expenditure of each of th three years, and "to ascertain how much ought to be charged to capital, and how muc "being for ordinary wear and tear and repairs and restorations likely to occur from tim "to time, should be deducted from gross profits in estimating the net divisible profit "contemplated as the basis of purchase under the Act of 1844."

After obtaining from the Companies their returns of working expenses, we examine their books with great minuteness to ascertain if revenue and capital charges had bee properly dealt with, so as to enable us if necessary to make corrections in the returns.

It was obvious, however, that in addition to correct or corrected accounts of mone received and expended it was essential to determine,—

1st. Whether the way, works, and rolling stock were in a fair average condition or whether their state showed a surplus or deficient value above or below tha average condition; and inasmuch as the condition of efficiency of nearly every railwa in regard to its rails, sleepers, and rolling stock varied according to their carefu maintenance or otherwise, to the period during which they had been used, and to th amount of traffic carried, it was indispensable that we should consider the detail resulting from the examination of every railway, and deal with them according to th circumstances of each separate case;

nd. Whether the expenditure against revenue upon the railway and works, and on rolling stock, had been sufficient to maintain them in a permanent state of efficiency. The corrections which we have made in order to arrive at the true net annual revenue ounded upon an estimate of the working expenses which, when the line, works, and ng stock shall have been placed in a state of proper efficiency, we consider sufficient aintain them in that state for all time. Any expenditure necessary to bring the rail- s up to that state of proper efficiency we have assumed to be spread over three years, interest thereon at 4 per cent. per annum has been included in the corrections le in the net annual revenue.

peaking generally of Irish railways, we may say that the rolling stock on the rage has been well maintained and is now in a fair state of efficiency, but that the manent way is on the average somewhat below that condition.

Referring to the terms of the Treasury Minute we have found it necessary to subdivide railways in this class (Table C.) into two heads:—

st. Those which have been carrying traffic sufficiently long to enable the three years' average to be applied. (Table D.)

nd. Those railways which, by reason of the short time they have been opened, and the consequent non-development of their traffic, or from some special circumstances could not be fairly dealt with on such average. (Table E.)

The following table (D.) of the companies comprised under the first head shews their re capital, the money they have borrowed, and their aggregate net corrected annual enue.

Table D.

ILWAYS COMPLETED AND CARRYING TRAFFIC. REVENUE COMPUTED ON THE THREE YEARS' AVERAGE.

Name of Railway.	Mileage.	Financial Position at Date of last published Accounts, as ascertained by the Commission.									Net corrected Annual Revenue on Average of Three Years.		
		Ordinary and Preference Share Capital.			Borrowed Money, including Floating Liabilities, less Floating Assets.			Total Share Capital and Borrowed Money.					
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Belfast and County Down	44¼	430,687	10	0	183,852	7	6	614,539	17	6			
Belfast and Northern Counties	99¼	767,202	10	0	374,987	7	9	1,142,189	17	9			
Londonderry and Coleraine	35¾	322,385	0	0	248,080	18	10	570,465	18	10			
Cork and Bandon	20	252,833	16	7	87,480	5	3	340,314	1	10			
Cork and Kinsale	10¾	27,179	15	0	69,792	15	2	96,972	10	2			
Cork, Blackrock, and Passage	6¼	118,340	0	0	36,052	1	6	154,392	1	6			
Dublin and Belfast Junction	55¼	873,500	0	0	226,632	3	7	1,100,132	3	7			
Banbridge Junction	6¾	39,928	0	0	17,434	16	11	57,362	16	11			
Dublin and Drogheda	74¾	894,800	0	0	310,009	17	1	1,204,809	17	1			
Dublin and Meath	35¾	316,615	0	0	165,947	6	2	482,562	6	2			
Dublin, Wicklow and Wexford	98½	1,215,030	0	0	592,173	2	11	1,807,203	2	11			
Dublin and Kingstown	8¼	350,000	0	0	62,064	9	6	412,064	9	6			
Great Southern and Western	418¾	5,437,079	15	0	645,055	0	9	6,082,134	15	9			
Irish North-western	86¼	706,673	19	1	305,168	4	2	1,011,842	3	3	777,947	2	1
Finn Valley	13¼	49,825	12	8	27,058	6	6	76,883	19	2			
Londonderry and Enniskillen	60	455 000	0	0	209,313	15	9	664,313	15	9			
Midland Great Western	246½	2,337,747	5	4	1,314,130	1	6	3,651,877	6	10			
Athenry and Tuam	15¼	61,018	0	0	29,399	8	6	90,417	8	6			
Newry and Warrenpoint, including connecting Line	6¼	119,910	0	0	43,672	19	7	163,582	19	7			
Ulster	64½	1,089,235	0	0	314,621	17	11	1,403,856	17	11			
Portadown, Dungannon, and Omagh	41	365,614	18	0	125,724	4	4	491,339	2	4			
Waterford and Kilkenny	29	446,885	0	0	304,557	5	9	751,442	5	9			
Waterford and Limerick	77¼	929,662	10	0	399,652	3	8	1,329,314	13	8			
**Limerick and Ennis*	24	96,888	3	0	98,648	1	8	195,536	4	8			
Waterford and Tramore	7¼	58,000	0	0	19,555	14	9	77,555	14	9			
	1,584¾	17,762,041	14	8	6,211,064	17	0	23,973,106	11	8			

Lines leased or worked by other companies are marked in italics.

* These railways will be entirely purchaseable under the Act of 1844 on the 1st of January 1869.

The following Table gives the railways comprised in the second head, with the amou of capital raised by the companies and the money they have borrowed.

Table E.

RAILWAYS COMPLETED AND CARRYING TRAFFIC. REVENUE NOT COMPUTED ON THE THREE YEARS' AVERAGE.

No. in Appendix and on Map.	Name of Railway.	Mileage.	Financial Position at Date of last published Accounts, as ascertained by the Commission.									Estimated corrected Annual Reve
			Share Capital.			Borrowed Money, including Floating Liabilities less Floating Assets.			Total Share Capital and Borrowed Money.			
			£	s.	d.	£	s.	d.	£	s.	d.	
27	Belfast, Holywood, and Bangor	12¼	236,088	10	0	98,870	6	4	334,958	16	4	
29	*Carrickfergus and Larne*	15⅛	82,529	0	0	42,358	3	9	124,887	3	9	
34	Cork and Macroom Direct	23¾	69,096	5	0	82,681	8	5	151,777	13	5	
42	*Cork and Limerick Direct*	17¼	83,157	0	0	36,796	16	11	119,953	16	11	
44	*Enniskillen, Bundoran, and Sligo*	35½	145,714	6	4	283,811	3	2	429,525	9	6	
47	Londonderry and Lough Swilly	14¾	34,459	10	0	73,102	1	9	107,561	11	9	
50	*Great Northern and Western*	82¾	427,199	18	6	201,000	15	6	628,200	14	0	
51	Newry and Armagh	21	148,081	11	0	355,252	3	1	503,333	14	1	£
54	*Banbridge, Lisburn, and Belfast*	15	122,795	0	0	74,648	10	11	197,443	10	11	74,39
57	Kilkenny Junction	19	91,455	0	0	186,090	2	2	277,545	2	2	
59	*Limerick, Castleconnell, and Killaloe*	13	61,493	0	0	28,882	3	6	90,375	3	6	
61	*Limerick and Foynes*	26¼	125,525	0	0	72,522	18	0	198,047	18	0	
62	*Rathkeale and Newcastle*	10	26,563	15	0	46,482	8	4	73,046	3	4	
64	West Cork	17½	121,237	0	9	196,285	3	10	317,522	4	7	
		323½	1,775,394	16	7	1,778,784	5	8	3,554,179	2	3	

Note.—Lines leased or worked by other Companies are printed in italics.

The data of average receipts do not exist for a sufficient period in the case of the above railways, to enable us to value them in the same manner as we have valued those in the previous table (Table D). We have, nevertheless, felt it our duty to make an estimate on the best evidence we could obtain, but we are anxious it should be understood that the amount is necessarily only an approximation.

The following Table gives the railways commenced but not completed where the works are so far advanced that it is assumed they will be finished.

Table F.

RAILWAYS COMMENCED BUT NOT COMPLETED. THE WORKS OF WHICH ARE SO FAR ADVANCED THAT IT IS ASSUMED THEY WILL BE FINISHED.

No. in Appendix and on Map.		Name of Railway.	Length of Line authorized and in part commenced.	Capital authorized.†	Capital expended.	Capital necessary to complete, including Rolling Stock.	Estimated Net Annual Revenue.
Main Lines.	Extensions and Branches.						
14	—	Banbridge Extension (Banbridge to Ballyroney)	9¾	120,000	£ 74,496		
17	—	Dublin and Antrim Junction (Knockmore Junction to Antrim)	18½	160,000	58,726		
19	—	Kilrush and Kilkee	8½	80,000	23,436		
20	—	Letterkenny (Letterkenny to Farland)	16½	199,800	82,224		
21	—	Midland Counties and Shannon Junction (Clara to Banagher)	17¾	* 153,300	75,289		
24	—	Southern (from Thurles Junction to Clonmel)	24	* 308,000	114,530		
—	64 *a.*	Skibbereen Extension of the West Cork	16	† —	—		
13	—	Athenry and Ennis	35¾	306,600	155,978	£	£
15	—	Belfast Central (in the town of Belfast)	3	400,000	253,285	782,344	45,160
16	—	Downpatrick, Dundrum, and Newcastle (Co. Down), (Downpatrick to Newcastle)	11	100,000	1,251		
23	—	Parsonstown and Portumna Bridge	12½	86,600	53,588		
—	50 *a.*	Foxford Branch of the Great Northern and Western.	11½	† —	—		
—	59 *a.*	Shannon Extension of the Limerick and Castleconnell.	¾	† —	—		
25	—	Waterford, New Ross, and Wexford (Bagnalstown to Ballywilliam).	20¾	* 440,000	—		
—	57 *a.*	Maryborough Extension of the Kilkenny Junction (Abbeyleix to Maryborough).	9½	† —	—		
		Total Mileage	215¾	2,354,300	892,803	782,344	45,160

* These amounts of authorized capital include the capital for four uncommenced branches (48½ miles in all) forming the second division of Class I. (Table A.)

† The capital authorized or expended for these branches forms part of and is included in the capital of the several main lines of which they are branches.

traffic upon railways which have not been completed cannot of course be estimated by analogy, but we have thought it desirable to include them in our report, give, to the best of our ability, the annual value of the whole of the railways and, which are now, or in a short time will be, carrying traffic. Those railways sions 1, 2, 3, and 4, of Table B. (215¾ miles), have been compared with other nearly similar as possible in point of population and other conditions governing and we have given in one total sum in the above Table F. the best approximation power to the "net annual revenue" which these railways may probably produce; s estimate must only be considered an approximate one.

Table G.

RY OF ALL THE RAILWAYS IN IRELAND, WITH THEIR MILEAGE, AUTHORIZED CAPITAL, FINANCIAL POSITION, AND CORRECTED ANNUAL REVENUE.

Classification of Railways.	Miles.	Total Miles.	Capital authorized.	Financial Position at Date of last published Accounts.				Estimated Net Corrected Annual Revenue.
				Ordinary and Preference Share Capital raised.	Borrowed Money, including Floating Liabilities less Floating Assets.	Capital necessary to complete, including Rolling Stock..	Total.	
Completed and carrying traffic.								
. Revenue computed on the basis of three years' average (Table D.).	1,584¾		25,417,006	17,762,042	6,211,065	—	23,973,107	777,947
. Revenue not computed on the basis of three years' average (Table E.).	323½		4,228,153	1,775,395	1,778,784	—	3,554,179	74,395
Commenced and not completed.								
1. Expected to be completed (Table F.).								
Main Lines - -	178		2,354,300	534,005	358,798	782,344	1,675,147	45,160
Branches of Lines completed	37¾		* —	* —	* —			
		2,124	31,999,459	20,071,442	8,348,647	782,344	29,202,433	897,502
2. Not expected to be carried out (Table B.)								
Main Lines - -	21¼		641,200					
Branches of Lines completed	15		* —					
Authorized but not commenced.								
(Table A.)								
Main Lines - -	254¾		3,245,900					
Branches of Lines completed	36		* —					
Branches of Lines to be completed - - -	48½		* —					
		375½						
		2,499½	35,886,559					

capital authorized or expended for these branches forms part of and is included in the capitals of the several main lines of ey are branches.

will be observed that in the foregoing Tables D, E, and F, we have given separately n the above general summary (Table G.) collectively the "Estimated net corrected nual revenue" of the railways, but we have not in any of those tables made an l deduction of the interest on borrowed money, so as to give the "Net divisible profits."

e difficulty we have found in making such deductions in detail, or in other words ing the principle of the Act of 1844 to the railways under the different classes erated, has arisen from the fact that of all the railways in Ireland, five only are entirely naseable under the Act of 1844, and the others vary considerably with reference to

Table FF. Appendix, p. 28.

the dates at which they will come altogether under the operation of the Act, and ther this mode of computation would not be fairly applicable in all cases, especially to Companies who have contracted temporary loans at high rates of interest to enable to complete their undertakings, but whose lines have not been opened for traffic suffici long to develop their resources and consolidate their credit as contemplated by t years' period of the Act of 1844.

It is probable, however, that the aggregate result may not be considerably aff by these circumstances, and that it will be useful to give the total results of a railways on one uniform basis of calculation, with an estimate of their "net divi profits" as required by the Treasury Minute.

Table H.

Railways completed or expected to be completed, with an estimate of ne divisible profits.

Number of Railways.	Classification of Railways.	Mileage.	Ordinary and Preference Share Capital.	Borrowed Money, including Floating Liabilities less Floating Assets.	Estimated Cost of Completion.	Total Capital and estimated Cost of Completion, including Rolling Stock.	Estimated Net corrected Annual Revenue.	Interest payable at Date of last published Accounts on Loans, Cost of Completion, and on Floating Liabilities, less Floating Assets. (Both the latter estimated at 5 per cent.)	Estimated Amount of Net Profits divisible on Share Capital.	Defi Esti Cor Re to Ta Cl
			£	£	£	£	£	£	£	
29	1. Companies whose net revenue is estimated to be in excess of interest charges -	1,640½	17,137,625	5,655,186	175,492	22,968,303	813,305	265,802	547,503	
21	2. Companies whose net revenue is estimated to be insufficient to meet interest charges	483½	2,933,817	2,693,461	606,852	6,234,130	84,197	162,355	- -	78
50	Total -	2,124	20,071,442	8,348,647	782,344	29,202,433	897,502	428,157	547,503	78

Rolling Stock.

ppendix, art I., p. 32. A table showing the number of locomotive engines, and the amount of carriage wagon stock belonging to the several railway companies in Ireland, is given in Appendix.

Directors and Staff employed by Railway Companies carrying Traffic.

ppendix, art I., p. 30. We have compiled from returns received from the railway companies a table shew the number of the directors and of the different classes of officers and men employe the several railways completed and carrying traffic, which is given in the Appendix.

Other Tables in Appendix.

ppendix, art I., p. 21 *seq.* We also give in the Appendix tables shewing in detail the capital authorized for e railway, the financial position of those completed or commenced, and the progress the traffic during the three years' period.

Traffic Arrangements.

ppendix, art II., . 33. In accordance with instructions received from the Treasury dated the 4th of April 18 we annex the particulars of agreements that Irish Railway Companies have entered among themselves or with Canal Companies "with respect to limiting the charges "traffic; the accommodation to the public or the assistance to be given to rail "extensions or new railways in cases where there was a competition between routes "communication for the traffic of any district or place."

Loans to Irish Railway Companies from Public Commissioners.

ppendix, art II., . 36. id., p. 40. ar. Pro. 867. o. 120. We have obtained a return from the Public Works Loan Commissioners of the Un Kingdom of all advances made by them from the year 1842 to the 3rd of January 18 showing the name of the railway, total advance, date of loan, period for which it made, the rate of interest, principal repaid, principal unpaid, interest in arrear, and c paid to the solicitors of the Commissioners. We annex this return in the Appendix also a return of the advances made to railway companies by the Commissioners of Pu

in Ireland between 1832 and 1847, which return was presented to Parliament
7.

following table gives the result of these two returns :—

	£
Total sum advanced by Public Commissioners to railways in Ireland	2,777,364
Total sum repaid	1,488,125
Total sum unpaid	1,289,239
Total interest in arrear	12,031

Railway Deposits in the Court of Chancery in Ireland.

have also obtained a return from the Accountant-General of the Court of Chancery and of the amount of Railway deposits standing in his name on the 2nd of October and it appears that, taking Consols and New Three per Cents. at par, the total leposited was 93,688*l.* Appendix, Part I., p. 40.

Act of Parliament, 1844.

c nclude this branch of the subject by calling attention to the fact that there are hree railways (having a total length of 62¼ miles), which having been authorized usly to the Act of 1844, cannot now or at a future time be dealt with under the rs conferred by that Act.

give in the following Table (I.) a summary shewing the position of all the rail- with respect to purchase under the Act of 1844, and more detailed particulars in the ndix. Table FF. Appendix, Part II., p. 28.

TABLE I.

POSITION OF RAILWAYS WITH RESPECT TO PURCHASE UNDER THE ACT 1844.

Number of Railways.	Length.	Total Share Capital and Borrowed Money.
	Miles.	
seable on 1st of January 1869 :		
ve entire lines	134¾	
xteen lines partly purchaseable	749 9/10	
Total purchaseable on 1st of January 1869	884 13/20	
seable after 1st of January 1869 :		
arts of 16 lines above mentioned	582 7/20	
ive lines wholly or in part purchaseable between 1870–1878	54½	
arts of same lines subsequently purchaseable	13½	
hirteen lines purchaseable between 1878–1888	311	
Total length ultimately purchaseable	1,846	
arts of three lines not purchaseable as having been authorized prior to 1844	62¼	
Total	1,908¼	£27,527,286

CANALS AND RIVER NAVIGATIONS.

ce the extension of the railway system, canals and river navigations have ceased to y the important position they previously held as a means of transit throughout nd, for goods and passengers. The carriage of passengers on canals may be said to wholly ceased, and only the heavier and less valuable description of goods are now d upon them.

e canals of Ireland were no doubt in their day of great public benefit, and probably ed the large sums of public money which were spent upon them, but it will be that with the exception of the Barrow Navigation, the Grand Canal, and the Lagan gation (the Royal Canal being merged in the Midland Great Western Railway), the ends paid by those which are in possession of public companies are almost nominal.

have divided the canals and river navigations of Ireland into the three following , and have given in the Appendix a short history of each :— Appendix, Part IV., p. 153.

. Those in possession of Public Companies or leased to Companies by Private Owners.

d. Those under the management of Local Trustees.

d. Those under Public Works Commissioners.

Table K.—Canals and River Navigations.

No. in Appendix and on Map.	Canals and River Navigations.		Length in Miles.
	I.—*In the Possession of Companies or Leased to Companies by Private Owners.*		
65	Barrow Navigation	—	42¼
66	Upper Boyne Navigation	—	6
67	Grand Canal Company	93½	
	(*a.*) The Liffey Branch	3¾	
	(*b.*) The Kildare Branch	7¼	
	(*c.*) The Blackwood Branch	4	
	(*d.*) The Barrow Line Branch	14	
	(*e.*) The Low Town Lateral Branch	1½	
	(*f.*) The Miltown Supply Branch	6½	
	(*g.*) The Athy Branch	14½	
	(*h.*) The Mountmellick Branch	11½	
	(*i.*) The Edenderry Branch	1	
	(*k.*) The Kilbeggan Branch	8¼	
	Total Grand Canal	—	165¾
68	Lagan Navigation	—	26¼
69	Newry Navigation	—	35
70	River Suir Navigation	—	16½
71	Royal Canal (Midland Great Western Railway Company	90¼	
	(*a.*) The Broadstone Harbour Branch	¾	
	(*b.*) The Longford Branch	5¼	
	Total Royal Canal	—	96¼
72	Foyle Navigation (Strabane to River Foyle)	—	4
	Total Mileage in the Possession of Companies		
	II.—*Under Local Trustees.*		
73	Ballinamore and Ballyconnell Navigation	—	37¾
74	Lower Bann Navigation	—	50¼
75	Upper Bann Navigation	—	21¼
76	Lough Corrib Navigation	—	23¾
	Total Mileage under Local Trustees		
	III.—*Under Public Works Commissioners.*		
77	Lower Boyne Navigation	—	12¾
78	Maigue Navigation	—	8
79	Shannon Navigation	143	
	(*a.*) The Boyle Branch	9	
	(*b.*) The Strokestown Branch	6	
	Total inland part of Shannon	—	158
80	Tyrone Navigation	—	4½
81	Ulster Canal	—	44
	Total Mileage under Public Works Commissioners		
	Total Mileage		

Six of these may be considered as large and important navigations, viz. :—

	Miles.
The Grand Canal, with its branches, having a total length of	165¾
The Barrow Navigation, which may be considered an extension of the Grand Canal	42¼
The Royal Canal and branches	96¼
The Upper and the Lower Bann Navigations, together	71½
The Ulster Canal	44
The Shannon River Navigation, with its branches	158

'he other canals and navigations (11 in number) are of a much less important 'acter.

.s already stated we took the same steps to ascertain the present value of the canals river navigations which we had adopted for the railways, viz., by the appointment nspecting Engineers to examine the state of the waterway, tow-paths, bridges, locks, ing, warehouses, and other works connected with them, also their steam boats carrying plant; and by the appointment of Accountants to examine and verify accounts. We supplied forms in which the information could be tabulated, and (as he case of the railways) we have ascertained their financial position and estimated r net annual revenue.

'he following table shows their share capital, the money they have borrowed, and net aggregate corrected annual revenue.

Table L.

ANALS AND RIVER NAVIGATIONS BELONGING TO COMPANIES. FINANCIAL POSITION AND CORRECTED ANNUAL REVENUE.

Name of Company.	Financial Position at Date of last Published Accounts.			Net corrected Annual Revenue on average of Three Years.
	Ordinary and Preference Share Capital.	Balance of Borrowed Money and Floating Liabilities or Floating Assets.	Total Share Capital and Borrowed Money.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Barrow Navigation - -	60,000 0 0	Cr. 3,014 13 9	56,985 6 3	
Grand Canal Company - -	665,938 14 6	Cr. 25,448 7 10	640,490 6 8	
Lagan Navigation - - -	80,149 18 11	Cr. 3,034 13 10	77,115 5 1	
Newry Navigation - -	66,495 7 2	Dr. 49,101 12 7	115,596 19 9	23,742 11 2
River Suir Navigation - -	8,960 0 0	—	8,960 0 0	
Foyle Navigation - - -	4,186 0 0	Cr. 415 15 11	3,770 4 1	
Total - £	885,730 0 7	17,188 1 3	902,918 1 10	
Upper Boyne Navigation - -	Particulars not furnished.			
Royal Canal - - - -	(Included with Midland Great Western Railway Accounts).			

The canals comprised in Table K. (Classes II. and III.), now in the possession Local Trustees or of the Public Works Commissioners, do not strictly come within scope of our report, but we have thought that our history of canals and river navi-ions would be incomplete without adding some account of them. They were all ecuted by means of public and local taxation, and are now under the charge of cal Trustees or the Commissioners of Public Works, of which the particulars will be nd in the Appendix. Appendix, Part IV. p. 154.

The canals and river navigations now in the possession of public companies are all re or less in competition with railways, and undoubtedly any change in the system of rking the railways might affect the interests of these canals, but to what extent must course depend on the nature of the change itself.

Assistance to Canals in Ireland.

The assistance given to canals belonging to companies in Ireland in the last and nmencement of the present century was chiefly in the form of loans of public money by grants from special or general taxes; but we have been unable to obtain from the ords of inland navigation in Ireland a complete account of the public loans which re made for such purpose. Appendix, Part IV. p. 171.

The assistance to the navigations under local trustees was by grants of public mon and advances secured on local taxation. To those under the Commissioners of Pul Works it was given in the case of the Ulster Canal by loans, of the Shannon Navigat by grants and advances secured on local assessment, and of the other navigations grants from special or general taxes.

Having thus reported, in what we believe to be the spirit of the instructions given the Treasury, on the condition and value of the railways and canals of Ireland, th remains to be considered only the question of the "prospects" of the railways.

Prospects of Railways in Ireland.

It is provided in the Act of 1844 that, if any railway be purchased under the powers that Act at 25 years' purchase upon its net divisible profits, if such profits be less th at the rate of 10 per cent. per annum on their subscribed and paid up capital stock, a if the company shall be of opinion that the rate of 25 years' purchase is an inadequate r of purchase, it shall have a right to require that it shall be left to arbitration to determ what (if any) additional amount of purchase money shall be paid to it with reference its "prospects."

In the case of those railways, or portions of them, which are not yet purchased under the Act of 1844, the companies would, if dealt with before the period of 21 ye shall have expired, appear to be entitled to a similar arbitration with reference to prospects of an increased development of traffic during the unexpired portion of t period.

We find that in the 39 railways comprised in Table C. (Class III.), the progress earnings compared with the length of miles carrying traffic in the three years. (accounts of which have been under examination and analysis) has been as follows:—

Table M.

Progress of Traffic Earnings from 1864–5 to 1866–7.

Year.	Average Number of Miles carrying Traffic.	Total Capital Expenditure at End of each Year.	Total Gross Earnings.	Gross Earnings per Mile per Annum.	Per-centage of Gross Earnings to Capital Expenditure.	Increase in Gross Earnings.	Increase Per Cent.	Increase Per Mile.	Increase Per-cent of Gro Earning Capital penditu per Ce
	Miles.	£	£	£	£	£	£	£	£
1864–5	1,774¾	26,100,167	1,597,212	900	6·119	—	—	—	—
1865–6	1,848¼	26,652,768	1,751,229	948	6·570	154,017	9·643	47·55	7·37
1866–7	1,891¾	27,210,728	1,829,758	967	6·724	78,529	4·484	19·737	2·34
			Mean Increase per annum from 1864–5 to 1866–7			116,273	7·279	33·643	4·94

It is difficult to say if this rate of increase be more or less than what may be conside the natural growth of the traffic on the railways in Ireland; although it has b continuous during the last three years, it may be assumed that under present conditi having reference to cost of management and the charges and accommodation for tra the probability is not great that for the future the average net revenue of the railway Ireland will be materially augmented.

If these conditions, however, should become changed by the economy and gre efficiency which would result from concentration of management and more harmoni working of the whole system, and by the adoption of much lower fares for passeng and rates for carriage of goods and cattle, it is probable that a considerable impe might be given to the traffic without permanent loss, but in the present state of th credit and finances, the Companies could not afford to run the risk of a period diminished profit for the chance of any ultimate advantage.

In connexion with the subject of the "prospects" of Irish railways, a reference future extensions can scarcely be avoided. The history of the efforts made during last few years to give the benefit of railway communication to districts hitherto unacc modated, has shewn that the limit of unaided undertakings (except in a few trifling cas has been reached, if not passed.

It will be admitted that few, if any, of the later enterprises have been launched on a sound basis of capital *bonâ fide* subscribed; but the necessity for extensions and additional railways has been so strongly felt that the most strenuous local efforts have been made, and every conceivable financial expedient submitted to, in order to accomplish the much desired result.

It may be desirable to repress the irregular "financing" of the past, but the necessity will still remain for dealing with districts of country in which railways would be of great local benefit, but which cannot be carried out without extraneous aid. Whether such assistance can best be afforded by local assessment, or otherwise, will, of course, require careful consideration. We do not believe, however, that in a matter of such recognized necessity much difficulty would be found in maturing some plan for the purpose, and, before stated, we have felt the question too important to be left altogether unnoticed this report.

In conclusion we desire to state that, should any matter connected with the inquiry appear to your Lordships to require elucidation we shall doubtless, from the ample material we have collected, be able to supply any additional information which may be desired.

We have the honour to be,
Your Lordships' obedient Servants,

(Signed) A. Y. SPEARMAN.
JOHN MULHOLLAND.
JOHN FOWLER.
SEYMOUR CLARKE.
C. JOHNSTONE.

The 30th of April 1868.

(Signed) W. Neilson Hancock,
Secretary.

APPENDIX.

PART I.—TABLES COMPILED BY THE COMMISSION.

TABLE (AA.)—LENGTH and CAPITAL of RAILWAYS, CLASS I., authorized but not commenced.

Number in Appendix and on Map.		Name of Company.	Length of authorized Line.	Capital authorized.		
Main Lines.	Branches and Extensions.			Shares.	Loans.	Total.
		1.—*Lines not commenced.*		£	£	£
1	—	Bray and Enniskerry	3½	36,000	12,000	48,000
2	—	Central Ireland (Maryborough to Mullingar	36	220,000	73,200	293,200
3	—	Clonmel, Lismore, and Dungarvan	38	300,000	100,000	400,000
4	—	Dublin Metropolitan (in the city of Dublin)	2½	160,000	53,000	213,000
5	—	Dublin, Rathmines, Rathgar, Roundtown, Rathfarnham, and Rathcoole (Dublin to Poulaphuca Bridge)	24	450,000	149,000	599,000
6	—	Dundalk and Greenore (Co. Louth)	13	160,000	53,200	213,200
7	—	Limerick and North Kerry (Newcastle to Listowel)	23	130,000	43,300	173,300
8	—	Navan and Kingscourt	20	120,000	40,000	160,000
9	—	Sligo and Ballaghaderreen (Kilfree Junction to Ballaghaderreen)	9½	50,000	16,600	66,600
10	—	Waterford, Lismore, and Fermoy (Waterford to Dungarvan and Lismore to Fermoy)	42½	400,000	133,000	533,000
11	—	Waterford and Passage (from Ballytruckle Junction to River Suir at Passage)	9½	80,000	26,600	106,600
12	—	Waterford and Wexford (from Ballyhack to Wexford and Greenore)	33¼	330,000	110,000	440,000
		Length of Lines not commenced	254¾	2,436,000	809,900	3,245,900
		2.—*Branches and Extensions not commenced belonging to Lines (included in Class II.) commenced but not completed.*				
	21 *a.*	Meelick Extension of Midland Counties, &c. (Banagher to Meelick)	5¾	Capital included under Class II.		
	24 *a.*	Collieries Branch of Southern (Graystown Junction to the Collieries)	9½			
	25 *a.*	Waterford Extension (Ballywilliam to Waterford) and	19			
	25 *b.*	Ballyhoge Branch (Ballywilliam to Ballyhoge) — of Waterford, New Ross, and Wexford	14¼			
		Length of Branches and Extensions, Class II., not commenced	48½			
		3.—*Branches and Extensions not commenced belonging to Lines (included in Class III.) completed and carrying traffic.*				
	39 *e.*	Kingstown connecting Branch of the Dublin, Wicklow, and Wexford	2	Capital included under Class III.		
	44 *a.*	Sligo Extension of the Enniskillen, Bundoran, and Sligo	23			
	50 *b.*	Ballina Extension, and	9¼			
	50 *c.*	Westport Quay Extension of the Great Northern and Western	1¾			
		Length of Branches and Extensions (Class III.) not commenced	36			
		Total Mileage authorized but not commenced	339¼			
		Total authorized Share and Loan Capital of the 12 Main Lines forming the first division		2,436,000	809,900	3,245,900

TABLE (BB.)—CAPITAL and FINANCIAL POSITION with TOTAL ESTIMATED COST of COMPLETING the WORKS of CLASS II., commenced but not completed.

No. in Appendix and on Map. Main Lines.	Branches and Extensions.	Name of Railway.	Length of Line authorized and in part commenced.	Capital authorized. Shares.	Loans.	Total.	Financial Position at the Date of the last published Account prior to the 14th of October 1867. Ordinary Share Capital.	Preference Share Capital.	Authorized Loans.	Floating Liabilities less Floating Assets.	
		1.—*Lines where after some Expenditure made, the Works are at a stand-still.*		£	£	£	£ s. d.	£	£ s. d.	£ s. d.	£
14	—	Banbridge Extension (Banbridge to Ballyroney).	9¾	90,000	30,000	120,000	51,114 5 8	—	—	23,382 1 5	74,496
17	—	Dublin and Antrim Junction (Knockmore Junction to Antrim).	18½	120,000	40,000	160,000	59,362 6 10	—	—	*Cr. 635 14 5*	58,726
19	—	Kilrush and Kilkee - -	8½	60,000	20,000	80,000	—	—	—	23,435 16 0	23,435
20	—	Letterkenny (Letterkenny to Farland).	16½	150,000	49,800	199,800	55,869 0 0	—	—	26,355 0 9	82,224
21	—	Midland Counties and Shannon Junction (Clara to Banagher).	17¾	115,000	38,300	153,300	47,711 14 7	—	100 0 0	27,477 1 4	75,288
24	—	Southern (Thurles Junction to Clonmel).	24	231,000	77,000	308,000	86,458 0 0	—	—	28,071 19 9	114,529
	64*a*.	Skibbereen Extension of the West Cork.	16 —111	Capital included in Class III.							
		2.—*Lines which may be expected to be completed by the Companies to which they belong.*									
13	—	Athenry and Ennis - -	35¾	230,000	76,600	306,600	54,990 5 0	65,790	16,600 0 0	18,597 11 8	155,977
15	—	Belfast Central (in the town of Belfast).	3	300,000	100,000	400,000	65,930 0 0	—	—	187,354 12 2	253,284
16	—	Downpatrick, Dundrum, and Newcastle (County Down), (Downpatrick to Newcastle).	11	75,000	25,000	100,000	2,016 0 0	—	—	*Cr. 764 10 4*	1,251
23	—	Parsonstown and Portumna Bridge.	12½	65,000	21,600	86,600	32,363 10 0	12,400	7,878 1 7 *6,000 0 0	*Cr. 5,053 10 7*	53,588
	50*a*.	Foxford Branch of the Great Northern and Western.	11½	Capital included in Class III.							
	59*a*.	Shannon Extension of the Limerick and Castleconnell.	¾ —74½	Capital included in Class III.							
		3.—*Line closed for Three Years which would require to be put in order before being re-opened.*									
25	—	Waterford, New Ross, and Wexford (Bagenalstown to Ballywilliam).	—20¾	330,000	110,000	440,000	- - -	—	- -	- - -	Ni
		4.—*Line incomplete on 1st May 1867 (the Period of accounting under the Treasury Minute), but since opened for Traffic.*									
	57 *a*.	Maryborough Extension of the Kilkenny Junction (from Abbeyleix to Maryborough).	— 9½	Capital included in Class III.							
			215¾	1,766,000	588,300	2,354,300	455,815 2 1	78,190	30,578 1 7	328,220 7 9	892,803
		5.—*Lines where only a small Amount of Works compared with the entire Undertaking has been executed.*									
18	—	Dublin Trunk Connecting (in the City of Dublin).	7¼	279,000	93,000	372,000	76,964 14 1	—	- -	15,394 19 6	92,359
22	—	Newry and Greenore (County Louth).	14	202,000	67,200	269,200	31,879 17 9	—	- -	60,134 2 3	92,014
	39 *d*.	Wexford Extension of the Dublin, Wicklow, and Wexford.	15 — 36¼	Capital included in Class III.							
		Total Mileage commenced but not completed.	252								
		Total Share and Loan Capital authorized and expended of the 13 Main lines included in above Table - -	—	2,247,000	748,500	2,995,500	564,659 13 11	78,190	30,578 1 7	403,749 9 6	1,077,177

* Loan Commissioners.

(CC.)—LENGTH and CAPITAL EXPENDITURE as per COMPANY'S ACCOUNTS in each YEAR of the THREE YEARS' PERIOD embraced in the TREASURY MINUTE, of RAILWAYS, CLASS III., completed and carrying TRAFFIC.

NAME OF RAILWAY.	Mileage.			Capital Expenditure per Company's Accounts.					
	Miles open at Commencement.	Miles opened during 3 Years.	Miles open at close of 3 Years.	At Commencement of Period.	During the Three Years. 1864-1865.	1865-1866.	1866-1867.	Total.	Total at close of 3 Years' Period.
PART I.—Revenue computed on the Three Years' average :—				£	£	£	£	£	£
Belfast and County Down	48¾	Less 4½ *	44¼	619,049	2,498	*Cr. 17,879*	11,413	*Cr. 3,968*	615,081
Belfast & Northern Counties	99¼	—	99¼	1,110,697	4,407	17,619	16,377	38,403	1,149,100
Londonderry and Coleraine	35¾	—	35¾	568,139	- -	- -	245	245	568,384
Cork and Bandon	20	—	20	336,353	523	250	3,131	3,904	340,257
Cork and Kinsale	10¾	—	10¾	66,827	28,162	712	921	29,795	96,622
Cork, Blackrock, & Passage	6¼	—	6¼	148,992	186	101	49	336	149,328
Dublin and Belfast Junction	55½	—	55½	1,118,643	512	5,110	3,999	9,621	1,128,264
Banbridge Junction	6¾	—	6¾	56,653	335	252	*Cr. 194*	393	57,046
Dublin and Drogheda	74¾	—	74¾	1,186,867	4,638	1,345	924	6,907	1,193,774
Dublin and Meath	35½	—	35½	438,396	29,955	7,015	2,194	39,164	477,560
Dublin, Wicklow, & Wexford	82	16½	98½	1,515,493	160,154	82,610	44,175	286,939	1,802,432
Dublin and Kingstown	8¼	—	8¼	418,842	- -	- -	- -	- -	418,842
Great Southern and Western *Cork and Youghal*	386¼ †32½	—	418¾	5,678,042 *340,000*	26,337	23,404	56,567	106,308	6,094,350
Irish North-Western	86¼	—	86¼	978,577	22,241	4,004	3,622	29,867	1,008,444
Finn Valley	13¼	—	13¼	71,342	5,249	844	2,740	8,833	80,175
Londonderry & Enniskillen	60	—	60	633,305	989	211	*Cr. 28,029*	*Cr. 26,829*	606,476
Midland Great Western	246½	—	246½	3,604,179	53,485	30,098	17,667	101,250	3,705,429
Athenry and Tuam	15¼	—	15¼	91,773	392	114	- -	506	92,279
Newry, & Warrenpoint, including Connecting Line.	6¼	—	6¼	162,210	757	465	*Cr. 266*	956	163,166
Ulster	64½	—	64½	1,353,303	35,584	20,995	23,531	80,110	1,433,413
Portadown Dungannon, and Omagh.	41	—	41	449,585	*Cr. 146*	34,015	1,817	35,686	485,271
Waterford and Kilkenny	29	—	29	595,445	440	500	13,781	14,721	610,166
Waterford and Limerick	77	¼	77¼	1,272,530	16,000	9,165	11,729	36,894	1,309,424
Limerick and Ennis	24	—	24	190,954	*Cr. 1*	*Cr. 14*	- -	*Cr. 15*	190,939
Waterford and Tramore	7¼	—	7¼	77,350	- -	- -	- -	- -	77,350
Total	1,572½	12¼	1,584¾	23,053,546	392,697	220,936	186,393	800,026	23,853,572
PART II.—Revenue not computed on the Three Years' average.									
Belfast, Holywood, & Bangor	—	7¾ *4½	12¼	122,252	49,607	96,065	13,934	159,606	281,858
Carrickfergus and Larne	15½	—	15½	109,289	6,926	3,550	556	11,032	120,321
Cork and Macroom Direct	—	23¾	23¾	28,494	41,977	45,644	29,855	117,476	145,970
Cork and Limerick Direct	17¼	—	17¼	114,180	2,080	930	2,930	5,940	120,120
Enniskillen, Bundoran, and Sligo.	—	35½	35½	153,683	69,216	63,395	132,551	265,162	418,845
Londonderry & Lough Swilly	9	5¾	14¾	78,086	21,959	2,071	209	24,239	102,325
Great Northern and Western	71¾	11	82¾	485,268	40,461	52,581	35,545	128,587	613,855
Newry and Armagh	3½	17½	21	416,883	42,633	18,256	1,335	62,224	479,107
Banbridge, Lisburn, & Belfast	15	—	15	171,752	2,611	348	14,215	17,174	188,926
Kilkenny Junction	—	19	19	180,289	69,629	29,786	22,102	121,517	251,806
Limerick, Castlecnl., & Killaloe	13	—	13	76,066	73	253	225	551	76,617
Limerick and Foynes	26¼	—	26¼	187,593	464	180	2,546	3,190	190,783
Rathkeale and Newcastle	—	10	10	20,708	11,398	18,606	13,043	43,047	63,755
West Cork	—	17½	17½	200,347	- -	- -	102,521	102,521	302,868
Total	171½	152¼	323½	2,294,890	359,034	331,665	371,567	1,062266	3,357,156
Gross of Parts I. and II.	1,743¾	164½	1,908¼	25,348,436	751,731	552,601	557,960	1,862,292	27,210,728

* Belfast and Holywood line (4½ miles) sold to Belfast, Holywood, and Bangor Company, 22nd August 1865.

† Cork and Youghal purchased on 1st July 1866, under Statute 29 & 30 Vict. c. 144.

TABLE (DD.)—FINANCIAL POSITION at the date of the last published Account

No. in Appendix and on Map.	Name of Railway.	Mileage.			Capital authorized.			Share Capital.			Fi
									Preference Shar		
		Single.	Double.	Total.	Shares.	Loans.	Total.	Ordinary Share Capital.	Amount.	Rate per Ce of Divide	
	PART I.—REVENUE COMPUTED ON THE THREE YEARS' AVERAGE.				£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.		
26	Belfast and County Down	44¼	-	44¼	515,000 0 0	166,666 0 0	681,666 0 0	237,287 10 0	182,350 0 0 11,050 0 0	5 4½	
28	Belfast and Northern Counties	92½	6¾	99¼	910,000 0 0	323,833 0 0	1,233,833 0 0	556,702 10 0	160,000 0 0 50,500 0 0	4 4½	
30	Londonderry and Coleraine	35¾	-	35¾	325,775 0 0	262,763 0 0	588,538 0 0	176,050 0 0	146,335 0 0	5	
31	Cork and Bandon	20	-	20	318,000 0 0	80,000 0 0	398,000 0 0	175,241 0 6	48,000 0 0 29,592 16 1	5½ 4	
32	Cork and Kinsale	10¾	-	10¾	85,000 0 0	28,200 0 0	113,200 0 0	20,649 15 0	6,530 0 0	6	
33	Cork, Blackrock, and Passage	6½	-	6½	130,000 0 0	43,330 0 0	173,330 0 0	118,340 0 0	- - -	—	
35	Dublin and Belfast Junction	-	55½	55½	873,500 0 0	291,150 0 0	1,164,650 0 0	873,500 0 0	- - -	—	
36	Banbridge Junction	6¾	-	6¾	60,000 0 0	20,000 0 0	80,000 0 0	22,128 0 0	17,800 0 0	5	
37	Dublin and Drogheda	43	31¼	74¼	953,000 0 0	317,333 0 0	1,270,333 0 0	644,800 0 0	155,775 0 0 94,225 0 0	5 4	
38	Dublin and Meath	35½	-	35½	390,000 0 0	115,000 0 0	505,000 0 0	133,155 0 0	120,750 0 0 62,710 0 0	5 6	
39	Dublin, Wicklow, and Wexford	86½	12	98½	1,460,000 0 0	480,932 0 0	1,940,932 0 0	510,000 0 0	200,000 0 0 505,030 0 0	6 5	
40	Dublin and Kingstown	2½	6	8½	350,000 0 0	110,000 0 0	460,000 0 0	350,000 0 0	- - -	-	
41	Great Southern and Western	228½	190½	418¾	5,709,940 0 0	630,965 0 0	6,340,905 0 0	4,107,979 15 0	1,329,100 0 0	4	
43	Irish North-Western	86½	-	86½	900,000 0 0	300,000 0 0	1,200,000 0 0	171,420 0 0 Spl.27,887 0 3	470,274 5 2 37,092 13 8	5 4	
45	Finn Valley	13½	-	13½	60,000 0 0	20,000 0 0	80,000 0 0	47,705 12 8	2,120 0 0	6	
46	Londonderry and Enniskillen	50½	9½	60	455,000 0 0	150,000 0 0	605,000 0 0	129,200 0 0	325,800 0 0	5	
48	Midland Great Western	131	115½	246½	2,750,000 0 0	1,286,076 0 0	4,036,076 0 0	2,157,175 0 0	180,572 5 4	5	
49	Athenry and Tuam	15½	-	15½	90,000 0 0	30,000 0 0	120,000 0 0	61,018 0 0	- - -	-	
52	Newry, Warrenpoint, and Rostrevor Town of Newry Connecting Line	5½ ¼	-	6¼	120,000 0 0	39,933 0 0	159,933 0 0	99,910 0 0	12,900 0 0 7,100 0 0	6 5½	
53	Ulster	16	48½	64½	1,200,000 0 0	309,000 0 0	1,509,000 0 0	1,000,000 0 0	89,235 0 0	4½	
55	Portadown, Dungannon, and Omagh	41	-	41	395,775 0 0	131,385 0 0	527,160 0 0	250,807 10 0	66,775 0 0 48,032 8 0	6 4½	
56	Waterford and Kilkenny	29	-	29	450,000 0 0	149,000 0 0	599,000 0 0	250,000 0 0	196,885 0 0	6	
58	Waterford and Limerick	53¾	23½	77¼	1,000,000 0 0	328,100 0 0	1,328,100 0 0	501,512 10 0	336,950 0 0 91,200 0 0	5 4½	
60	Limerick and Ennis	24	-	24	150,000 0 0	75,000 0 0	225,000 0 0	84,563 3 0	12,325 0 0	5	
63	Waterford and Tramore	7½	-	7½	58,000 0 0	19,350 0 0	77,350 0 0	48,000 0 0	10,000 0 0	5	
	Total	1085¼	499½	1584¾	19,708,990 0 0	5,708,016 0 0	25,417,006 0 0	12,755,032 6 5	5,007,009 8 3	-	
	PART II.—REVENUE NOT COMPUTED ON THE THREE YEARS' AVERAGE.										
27	Belfast, Holywood, and Bangor	12½	-	12½	300,000 0 0	99,000 0 0	399,000 0 0	156,868 10 0	79,220 0 0	5	
29	Carrickfergus and Larne	15½	-	15½	125,000 0 0	41,500 0 0	166,500 0 0	82,529 0 0	- - -	-	
34	Cork and Macroom Direct	23¾	-	23¾	120,000 0 0	40,000 0 0	160,000 0 0	69,096 5 0	- - -	-	
42	Cork and Limerick Direct	17½	-	17½	105,000 0 0	33,000 0 0	138,000 0 0	71,375 0 0	11,782 0 0	5	
44	Enniskillen, Bundoran, and Sligo	35½	-	35½	450,000 0 0	149,900 0 0	599,900 0 0	45,714 6 4	100,000 0 0	5	
47	Londonderry and Lough Swilly	14½	-	14½	105,000 0 0	26,200 0 0	131,200 0 0	34,459 10 0	- - -	-	
50	Great Northern and Western	82½	-	82½	554,000 0 0	184,000 0 0	738,000 0 0	375,239 18 0	49,740 0 0 2,220 0 0	5 6	
51	Newry and Armagh	21	-	21	408,120 0 0	78,000 0 0	486,120 0 0	46,965 0 0	101,116 11 0	5	
54	Banbridge, Lisburn, and Belfast	15	-	15	150,000 0 0	49,000 0 0	199,000 0 0	87,969 0 0	25,000 0 0 9,526 0 0	4 5	
57	Kilkenny Junction	19	-	19	274,000 0 0	90,600 0 0	364,600 0 0	50,575 0 0	40,880 0 0	6	
59	Limerick, Castleconnell, and Killaloe	13	-	13	69,500 0 0	22,833 0 0	92,333 0 0	53,713 0 0	7,780 0 0	6	
61	Limerick and Foynes	25½	¼	26¼	175,000 0 0	43,300 0 0	218,300 0 0	97,037 10 0	28,487 10 0	5½	
62	Rathkeale and Newcastle	10	-	10	62,000 0 0	31,600 0 0	93,600 0 0	16,513 15 0	10,050 0 0	5	
64	West Cork	17½	-	17½	320,000 0 0	121,600 0 0	441,600 0 0	66,817 0 9	54,430 0 0	6	
	Total	322¼	¼	322½	3,217,620 0 0	1,010,533 0 0	4,228,153 0 0	1,254,872 15 7	520,522 1 0	-	
	Gross total of Parts I. and II.	1,408	500¼	1,908¾	22,926,610 0 0	6,718,549 0 0	29,645,159 0 0	14,009,905 2 0	5,527,531 9 3	-	
	Average of Parts I. and II.	-	-	-	- - -	- - -	- - -	- - -	- - -	4 15	

October 1867, of RAILWAYS, CLASS III. COMPLETED AND CARRYING TRAFFIC.

...d Accounts prior to Treasury Minute of the 14th of October 1867.

...ck. Authorized Loans. Debentures. Yearly Interest payable.	Debentures. Amount.	Debentures. Average Rate per cent. of Interest.	Debentures. Yearly Interest payable.	Loan Commissioners. Amount.	Loan Commissioners. Rate per cent. of Interest.	Loan Commissioners. Yearly Interest payable.	Floating Liabilities, less Floating Assets. Amount.	Floating Liabilities, less Floating Assets. Yearly Interest estimated at an average of 5 per cent.	Total Share Capital, and borrowed Money, including Floating Liabilities.	Total yearly Dividend on Preference Stocks payable.	Interest payable on authorized Loans, and on Floating Liabilities, less Floating Assets, the latter estimated at 5 per cent.	No. in Appendix and on Map.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
- - -	100,643 18 4	4 16 6	8,040 11 5	- - -	- -	- - -	17,208 9 2	860 8 5	614,539 17 6	9,587 2 6	8,900 19 10	26
4 8 0	285,183 17 0	4 9 5	12,750 11 5	- - -	- -	- - -	89,693 10 9	4,484 13 6	1,142,189 17 9	8,672 10 0	17,239 12 11	28
- - -	236,991 14 9	3 16 10	9,105 4 5	- - -	- -	- - -	11,089 4 1	554 9 3	570,465 18 10	7,516 15 0	9,659 13 8	30
332 8 0	62,595 17 0	5 8 3	3,387 16 0	8,911 16 0	4 0 0	356 9 5	7,662 12 3	383 2 7	340,314 1 10	3,823 14 3	4,459 13 9	31
- - -	21,600 0 0	5 14 6	1,236 12 0	- - -	- -	- - -	48,192 15 2	2,409 12 9	96,972 10 2	391 16 0	3,646 4 9	32
- - -	38,450 0 0	5 5 5	2,026 14 0	3,324 0 0	4 0 0	132 19 3	Cr. 57/4/18/6	Cr. 286/4/14	154,392 1 6	- - -	1,873 11 4	33
44 0 0 150 13 5	227,510 0 0	4 15 3	10,834 0 6	- -	- -	- - -	Cr. 5522/16/3	Cr. 276/2/10	1,100,132 3 7	- - -	10,752 10 11	35
- -	17,250 0 0	4 10 11	784 3 9	- -	- -	- - -	184 16 11	9 4 10	57,362 16 11	890 0 0	793 8 7	36
1,748 17 7	250,498 0 0	4 10 3	11,302 9 5	2,860 12 8	4 0 0	114 15 9	12,920 4 5	646 0 3	1,204,809 17 1	11,557 15 0	13,812 3 0	37
- - -	101,494 0 0	5 0 0	5,074 14 0	13,500 0 0	5 0 0	675 0 0	50,953 6 2	2,547 13 4	482,562 6 2	9,800 2 0	8,297 7 4	38
- - -	234,581 13 4	4 16 11	11,367 16 6	219,324 0 0	4 16 2	10,545 1 11	138,267 9 7	6,913 7 6	1,807,203 2 11	37,251 10 0	28,826 5 11	39
2,800 0 0	- - -	- -	- - -	- - -	- -	- - -	Cr. 7,933/10/6	Cr. 396/15/7	412,064 9 6*	- - -	2,403 4 5	40
20 0 0	484,672 1 5	4 8 1	21,344 19 2	77,596 11 0	4 0 0	3,103 17 3	82,286 8 4	4,114 6 5	6,082,134 15 9	53,164 0 0	28,583 2 10	41
2,865 18 4	169,616 0 0	5 [illegible] 8	9,300 0 11	62,398 2 0	4 0 0	2,495 18 6	15,835 14 11	791 15 9	1,011,842 3 3	24,997 8 5	15,453 13 6	43
- - -	- - -	- -	- - -	20,000 0 0	5 0 0	1,000 0 0	7,058 6 6	352 18 4	76,883 19 2	127 4 0	1,352 18 4	45
89 5 0 1,234 0 0 828 10 0	76,000 0 0	5 2 0	3,876 0 0	17,068 14 0	4 0 0	682 6 11	70,185 1 9	3,509 5 1	664,313 15 9	16,290 0 0	10,218 7 0	46
- - -	834,671 15 8	4 9 4	37,282 0 1	448,015 17 11	3 10 0	15,680 11 1	31,442 7 11	1,572 2 5	3,651,877 6 10	9,028 12 3	54,534 13 7	48
- - -	- - -	- -	- - -	30,000 0 0	5 0 0	1,500 0 0	Cr. 600/11/6	Cr. 30/0/7	90,417 8 6	- - -	1,469 19 5	49
- - -	31,300 0 0	4 19 8	1,559 15 8	8,400 0 0	5 0 0	420 0 0	3,972 19 7	198 13 0	163,582 19 7	1,164 10 0	2,178 8 8	52
2,127 8 0	233,885 0 0	4 6 1	10,066 8 2	- - -	- -	- - -	27,551 17 11	1,377 11 11	1,403,856 17 11	4,015 11 6	13,571 8 1	53
- - -	107,817 0 0	4 10 10	4,896 13 9	16,768 0 0	4 0 0	670 14 5	1,139 4 4	56 19 3	491,339 2 4	6,167 19 2	5,624 7 5	55
3,066 11 0	29,046 0 0	5 12 3	1,630 1 3	56,658 11 2	3 16 9	2,173 19 9	157,521 14 7	7,876 1 9	751,442 5 9	11,813 2 0	14,746 13 9	56
20 0 0 212 10 0 45 10 0 22 10 0	251,165 0 0	4 17 3	12,211 12 10	54,801 2 4	3 10 0	1,918 0 9	77,686 1 4	3,884 6 1	1,329,314 13 8	20,951 10 0	18,706 9 8	58
- - -	50,150 0 0	5 15 1	2,885 14 3	22,809 0 0	3 10 0	798 6 4	25,039 1 8	1,284 9 1	195,536 4 8	616 5 0	4,968 9 8	60
- - -	19,550 0 0	5 1 4	980 8 0	- - -	- -	- - -	205 14 9	10 5 9	77,555 14 9	500 0 0	990 13 9	63
[illegible]	[illegible]	- -	181,944 5 3	1,062,435 7 1	- -	42,268 1 4	856,966 5 2	42,848 6 4	23,973,106 11 8	238,127 7 1	283,064 2 1	
- - -	33,000 0 0	5 0 0	1,900 0 0	- - -	- -	- - -	60,370 6 4	3,043 10 4	334,958 16 4	3,961 0 0	4,943 10 4	27
- - -	41,010 0 0	4 19 8	2,043 10 7	- - -	- -	- - -	1,348 3 9	67 8 2	124,887 3 9	- - -	2,110 18 9	29
- - -	37,350 0 0	5 10 10	2,069 18 9	- - -	- -	- - -	45,331 8 5	2,266 11 5	151,777 13 5	- - -	4,336 10 2	34
- - -	33,000 0 0	5 5 1	1,733 16 5	- - -	- -	- - -	3,796 16 11	189 16 10	119,953 16 11	589 2 0	1,923 13 3	42
- - -	85,400 0 0	5 0 0	4,270 0 0	- - -	- -	- - -	138,411 3 2	9,920 11 2	429,525 9 6	5,000 0 0	14,190 11 2	44
- - -	6,300 0 0	6 0 0	396 0 0	13,000 0 0	5 0 0	650 0 0	53,502 1 9	2,675 2 1	107,561 11 9	- - -	3,721 2 1	47
- - -	- - -	- -	- - -	134,000 0 0	4 3 1	5,566 7 2	67,000 15 6	3,350 0 9	628,200 14 0	2,620 4 0	8,916 7 11	50
- - -	78,000 0 0	5 0 0	3,900 0 0	- - -	- -	- - -	277,252 3 1	13,862 12 2	503,333 14 1	5,055 16 7	17,762 12 2	51
- - -	49,000 0 0	5 1 3	2,480 12 6	- - -	- -	- - -	25,648 10 11	1,282 8 7	197,443 10 11	1,491 6 0	3,763 1 1	53
- - -	65,958 0 0	5 0 0	3,297 18 0	- - -	- -	- - -	120,132 2 2	6,006 12 1	277,545 2 2	2,452 16 0	9,304 10 1	57
- - -	20,333 0 0	5 6 10	1,066 3 9	- - -	- -	- - -	8,549 3 6	427 9 2	90,375 3 6	466 16 0	1,513 13 11	59
- - -	17,500 0 0	5 15 1	1,006 19 7	25,773 0 0	3 10 0	902 1 1	29,249 18 0	1,462 9 6	198,047 18 0	1,566 16 3	3,371 9 8	61
- - -	- - -	- -	- - -	16,600 0 0	5 0 0	830 0 0	29,882 8 4	1,494 2 5	73,046 3 4	502 10 0	2,324 2 5	63
- - -	193,500 0 0	5 0 9	5,364 18 9	- - -	- -	- - -	89,785 3 10	4,489 5 2	317,522 4 7	3,265 4 0	9,854 3 11	64
- - -	378,861 0 0	- -	20,549 18 4	189,373 0 0	- -	7,948 8 3	1,010,760 5 8	50,537 19 4	5,591,179 2 3	26,971 10 10	88,036 5 11	
- - -	1,399,122 17 6	- -	211,494 3 7	1,251,808 7 1	- -	50,216 9 7	1,867,726 10 10	93,386 5 8	27,327 285 13 11	265,098 17 11	371,100 8 0	
- - -	- - -	4 13 10	- - -	- - -	- -	4 0 3	- - -	- - -	- - -	- - -	- - -	

TABLE (EE.)—RAILWAYS, (

Progress of Traffic during Th

No. in Appendix and on Map.	Name of Railway.	Mileage.			Traffic, 1864-1865.		
		Open at Commencement of Three Years' Period.	Open during Three Years.	Opened at close of Three Years' Period.	Passengers, including Mails, Horses, Carriages, and Dogs.	Goods, including Live Stock, Minerals, and Coals.	Total.
	PART I.—REVENUE COMPUTED ON THE THREE YEARS' AVERAGE.	Miles.	Miles.	Miles.	£	£	£
26	Belfast and County Down	48½	*Less 4½	44½	30,142	9,874	40,016
28	Belfast and Northern Counties	99½	- -	99½	53,271	43,071	96,342
30	Londonderry and Coleraine	35½	- -	35½	10,884	5,852	16,736
31	Cork and Bandon	20	- -	20	10,961	7,667	18,628
32	Cork and Kinsale Junction	10½	- -	10½	1,350	604	1,954
33	Cork, Blackrock, and Passage	6½	- -	6½	9,095	- - -	9,095
35	Dublin and Belfast Junction	55½	- -	55½	50,697	19,885	70,582
36	Banbridge Junction	6½	- -	6½	817	1,295	2,112
37	Dublin and Drogheda	74½	- -	74½	60,762	26,771	87,533
38	Dublin and Meath	35½	- -	35½	9,256	4,613	13,869
39	Dublin, Wicklow, and Wexford (including Dublin and Kingstown)	90½	16½	106½	124,452	30,076	154,528
40	Dublin and Kingstown	Leased to and included with Dublin, Wicklow, and Wexford.					
41	Great Southern and Western	386½	- -	418½	274,832	165,544	440,376
	Cork and Youghal	†32½			25,441	- - -	25,441
43	Irish North Western (including Londonderry and Enniskillen)	146½	- -	146½	42,788	45,239	88,027
45	Finn Valley	13½	- -	13½	2,126	1,227	3,353
46	Londonderry and Enniskillen	Leased to and included with Irish North Western.					
48	Midland Great Western	246½	- -	246½	127,830	96,213	224,043
49	Athenry and Tuam	15½	- -	15½	1,565	1,359	2,924
52	Newry, Warrenpoint, and Rostrevor (including Connecting Line)	6½	- -	6½	3,777	1,501	5,278
53	Ulster	64½	- -	64½	61,311	46,201	107,512
55	Portadown, Dungannon, and Omagh	41	- -	41	10,480	9,241	19,721
56	Waterford and Kilkenny	29	- -	29	9,529	11,768	21,297
58	Waterford and Limerick	77	½	77½	32,146	35,335	67,481
60	Limerick and Ennis	24	- -	24	5,455	4,030	9,485
63	Waterford and Tramore	7½	- -	7½	4,896	238	5,134
	Total Part I.	1,572½	12½	1,584½	963,863	567,604	1,531,467
	Average Part I.	- - -	- -	- - -	- - -	- - -	- - -
	PART II.—REVENUE NOT COMPUTED ON THE THREE YEARS' AVERAGE.						
27	Belfast, Holywood, and Bangor	- - -	7½ / *4½	12½	- - -	- - -	- - -
29	Carrickfergus and Larne	15½	- -	15½	2,863	1,561	4,424
54	Cork and Macroom Direct	- - -	23½	23½	- - -	- - -	- - -
42	Cork and Limerick Direct	17½	- -	17½	5,280	4,857	10,137
44	Enniskillen, Bundoran, and Sligo	- - -	35½	35½	- - -	- - -	- - -
47	Londonderry and Lough Swilly	9	5½	14½	1,905	713	2,618
50	Great Northern and Western	71½	11	82½	15,720	9,920	25,640
51	Newry and Armagh	3½	17½	21	3,147	3,971	7,118
54	Banbridge, Lisburn, and Belfast	15	- -	15	4,139	2,547	6,686
57	Kilkenny Junction	- - -	19	19	- - -	- - -	- - -
59	Limerick, Castleconnell, and Killaloe	13	- -	13	1,967	998	2,965
61	Limerick and Foynes	26½	- -	26½	4,045	2,112	6,157
62	Rathkeale and Newcastle	- - -	10	10	- - -	- - -	- - -
64	West Cork	- - -	17½	17½	- - -	- - -	- - -
	Total Part II.	171½	152½	323½	39,066	26,679	65,745
	Average Part II.	- - -	- -	- - -	- - -	- - -	- - -
	Total of both Parts	1,743½	164½	1,908½	1,002,929	594,283	1,597,212
	Average	- - -	- -	- - -	- - -	- - -	- - -

* Belfast and Holywood Line [illegible]
† Cork and Youghal Line purchased under Stat. 29 & 30 Vict. c. [illegible]

AND CARRYING TRAFFIC.

nts and Miscellaneous Receipts.

1865-1866.			Traffic, 1866-1867.				Increase or Decrease, 1866 with 1865.			Increase or Decrease, 1867 with 1866.			Mean Increase or Decrease per Annum on the Two Years 1867 with 1865.			No. in Appendix and on Map.
	Total.	Rate per Mile per Annum.	Passengers, including Mails, Horses, Carriages, and Dogs.	Goods, including Live Stock, Minerals, and Coals.	Total.	Rate per Mile per Annum.	Amount.	Per Cent.	Per Mile per Annum.	Amount.	Per Cent.	Per Mile per Annum.	Amount.	Per Cent.	Per Mile.	
£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	
486	34,536	776	24,784	11,685	36,469	824	*d* 5,480	*d*13·694	*d*44·891	1,933	5·597	48·208	*d* 1,773	*d* 4·432	1·658	26
231	105,213	1,060	61,571	54,943	116,514	1,174	8,901	9·24	89·683	11,271	10·709	113·562	10,086	10·469	101·622	28
855	17,269	483	11,745	6,560	18,305	512	533	3·185	14·909	1,036	5·999	28·979	784	4·687	21·944	30
898	21,006	1,050	12,686	9,566	22,252	1,113	2,378	12·765	118·9	1,246	5·931	62·3	1,812	9·727	90·6	31
874	2,360	220	1,611	961	2,572	239	406	20·777	37·768	212	8·983	19·721	309	15·813	28·744	32
-	10,066	1,611	9,631	- -	9,631	1,541	971	10·676	155·36	*d* 435	*d* 4·321	*d* 69·60	268	2·946	42·88	33
450	76,598	1,380	53,038	23,756	76,794	1,384	6,016	8·523	108·396	196	·255	3·532	3,106	4·393	55·964	35
192	2,311	342	1,171	1,523	2,694	399	199	9·422	29·482	383	16·572	56·741	291	13·778	43·111	36
980	93,779	1,255	62,441	31,631	94,072	1,258	6,246	7·135	83·559	293	·312	3·919	3,270	3·73	43·739	37
588	15,167	427	8,077	5,701	13,778	388	1,298	9·359	36·563	*d* 1,389	*d* 9·158	*d*39·126	*d* 45	*d* ·328	*d* 1·281	38
681	170,073	1,593	130,152	36,732	166,884	1,563	15,545	10·059	*d*35·404	*d* 3,189	*d* 1·875	*d*29·874	6,178	3·998	*d*57·639	39
																40
327	479,203	1,241	302,805	207,723	510,528	1,219	41,737	8·960	99·67	2,974	·586	7·102	22,355	4·799	53·386	41
	28,351	872														
547	94,109	643	48,028	53,806	101,834	696	6,082	6·909	41·586	7,725	7·586	52·821	6,904	7·842	47·203	43
514	3,779	285	2,412	1,753	4,165	314	426	12·705	32·151	386	10·214	29·151	406	12·108	30·641	45
																46
756	248,028	986	127,622	121,724	249,346	1,012	18,985	8·473	77·018	6,318	2·599	25·631	12,652	5·646	51·324	48
506	3,120	205	1,580	1,585	3,165	208	196	6·703	12·852	45	1·442	2·951	120	4·121	7·901	49
979	5,910	1,006	4,213	2,216	6,429	1,094	632	11·977	107·574	519	8·781	88·341	575	10·903	97·957	52
721	113,618	1,762	69,309	54,641	123,950	1,922	6,106	5·679	94·666	10,382	9·093	160·186	8,219	7·644	127·426	53
947	21,751	531	12,675	10,902	23,577	575	2,030	10·298	49·512	1,826	8·395	44·537	1,928	9·776	47·024	55
930	21,272	686	9,547	13,178	22,725	733	*d* 25	*d* ·117	*d* ·807	1,453	6·83	46·871	714	3·352	23·032	56
636	72,093	933	34,947	43,016	77,963	1,009	4,612	6·688	59·250	5,870	8·142	75·987	5,241	7·766	67·618	58
506	10,283	428	5,916	4,838	10,754	448	798	8·413	33·250	471	4·58	19·625	634	6·689	26·437	60
267	4,954	683	4,881	301	5,182	715	*d* 180	*d* 3·506	*d*24·828	228	4·603	31·449	24	·467	3·31	63
671	1,649,879	- -	1,000,842	698,741	1,699,583	- -	118,412	- -	- -	49,704	- -	- -	84,058	- -	- -	
- - - -		1,039	- - -	- - -	- -	1,071	- -	7·732	68·206	- -	3·013	31·502	- -	5·489	49·854	
-	12,587	1,004	14,898	- -	14,898	1,216	12,587	- -	- -	2,311	18·360	212·655	7,449	—	—	27
482	4,581	296	3,388	1,756	5,144	332	157	3·549	10·129	563	12·29	36·323	360	8·137	25·226	29
926	1,825	407	7,137	4,139	11,276	475	1,325	- -	- -	9,951	751·019	67·463	5,638	—	—	31
830	11,026	477	6,233	6,670	12,903	527	1,559	15·379	63·633	1,207	10·329	49·265	1,383	13·648	56·449	12
67	2,029	250	4,881	3,045	7,926	223	2,029	- -	- -	5,207	201·483	*d*27·017	3,963	—		41
884	3,819	261	2,734	858	3,592	299	1,201	45·874	71·030	*d* 227	*d* 5·944	38·294	487	18·601	54·662	47
881	32,075	120	19,002	17,588	36,590	442	6,435	25·098	62·362	4,515	14·076	22·461	5,475	21·353	12·411	50
566	11,689	547	5,458	8,105	13,563	635	4,571	64·217	167·954	1,874	16·032	87·673	3,223	45·272	127·813	51
591	7,579	492	5,026	3,048	8,074	538	693	10·364	46·2	695	9·418	46·333	694	10·379	46·266	54
019	3,675	129	- - -	- - -	- - -	- - -	3,675	—	—	*d* 3,675	—	—	—	—	—	57
140	3,112	239	2,019	1,078	3,097	238	147	4·958	11·308	*d* 15	*d* ·482	*d* 1·154	66	2·236	5·077	59
559	6,783	258	5,013	2,645	7,658	292	626	10·167	23·848	875	12·9	33·331	750	12·189	28·591	61
-	- - -	- -	538	486	1,024	205	—	—	—	1,024	—	—	512	—	—	62
-	- - -	- -	2,608	1,822	4,430	241	—	—	—	4,430	—	—	2,215	—	—	64
5,746	161,350	- -	78,935	151,240	130,175	- -	35,605	- -	- -	28,825	- -	- -	32,215	- -	- -	
- - - -		387	- - -	- - -	- - -	426	- -	54·156	56·381	- -	28·441	38·913	- -	43·999	47·647	
1,447	1,774,229	- -	1,079,777	749,981	1,829,758	- -	154,017	- -	- -	78,529	- -	- -	116,273	—	—	
- - -		948	- - -	- -	- - -	967	- -	9·643	47·55	- -	4·464	19·737	- -	7·279	33·643	

Railway Company, 22nd August 1865.
Branches of the Great Southern and Western).

TABLE (FF.). showing POSITION OF RAILWAYS IN IRELAND WITH RESPECT TO THEIR LIABILITY TO BE PURCHASED UNDER THE ACT OF 1844. (7 & 8 VICT. C. 85.)

LINES, PARTS OF WHICH ARE NOT PURCHASEABLE UNDER THE ACT OF 1844, HAVING BEEN AUTHORIZED BEFORE THAT DATE.

No. in Appendix and on Map.	Name of Railway.	Length of part not purchaseable under Act of 1844.	Length of part at sometime purchaseable under Act of 1844.	Total Length.
		Miles.		
40	Dublin and Kingstown	6	2¼	8¼
53	Ulster	24½	40	64½
37	Dublin and Drogheda	31¾	43	74¾
	Total	62¼	85¼	147½

LINES ENTIRELY PURCHASEABLE UNDER THE ACT OF 1844, ON THE 1ST OF JANUARY 1869.

No. in Appendix and on Map.	Name of Railway.	Length.	Total Share Capital and Borrowed Money.
		Miles.	£
31	Cork and Bandon	20	340,314
33	Cork, Blackrock, and Passage	6¼	154,392
35	Dublin and Belfast Junction	55½	1,100,132
56	Waterford and Kilkenny	29	751,442
60	Limerick and Ennis	24	195,536
	Total	134¾	2,541,816

LINES PARTLY PURCHASEABLE UNDER THE ACT OF 1844, ON THE 1ST OF JANUARY 1869.

No. in Appendix and on Map.	Name of Railway.	Length of part purchaseable 1st January 1869.	Length of part subsequently purchaseable, with Dates when Right of Purchase arises.		Length of part authorized prior to 1844.	Total Length.	Total Share Capital and Borrowed Money.
		Miles.	Miles.	Date.	Miles.	Miles.	£
58	Waterford & Limerick	77	¼	1882	—	77¼	1,329,315
52	Newry, Warrenpoint, & Rostrevor	5½	¾*	1879	—	6¼	163,583
30	Londonderry and Coleraine	32⅓	3¼	1872	—	35⅓	570,466
41	Great Southern & Western	294¼	124½	1875–1883	—	418¾	6,082,135
48	Midland Great Western	152½	94	1874–1881	—	246½	3,651,877
37	Dublin and Drogheda	30¼	12¾	1882	31¾	74¾	1,204,810
28	Belfast & Northern Counties	38	61¼	1875–1881	—	99¼	1,142,190
55	Portadown, Dungannon, and Omagh	13½	27½	1879	—	41	491,339
39	Dublin, Wicklow, & Wexford	32 7/10	66 1/10	1879–1885	—	98½	1,807,203
40	Dublin and Kingstown	2¼	—	—	6	8¼	412,064
43	Irish North-Western	26	60¼	1874–1881	—	86¼	1,011,842
27	Belfast, Holywood, & Bangor	4½	7¾	1882	—	12¼	334,959
26	Belfast and County Down	12	32¼	1877–1880	—	44¼	614,540
46	Londonderry & Enniskillen	14¾	45½	1872–1876	—	60	664,314
51	Newry and Armagh	3½	17½	1875–1879	—	21	503,334
53	Ulster	11	29	1877–1881	24½	64½	1,403,857
	Total	749 9/10	582 7/20		62¼	1,394½	21,387,828

* Town of Newry connecting Line.

LINES PURCHASEABLE WHOLLY OR IN PART UNDER THE ACT OF 1844, BETWEEN 1870–1878.

No. in Appendix and on Map.	Name of Railway.	Date when purchaseable.	Length of part purchaseable before 1878.	Length of part not purchaseable before 1878.	Total Length.	Total Share Capital and Borrowed Money.
			Miles.	Miles.	Miles.	£
63	Waterford and Tramore	1873	$7\frac{1}{4}$	—	$7\frac{1}{4}$	77,556
36	Banbridge Junction	1875	$6\frac{3}{4}$	—	$6\frac{3}{4}$	57,363
61	Limerick and Foynes	1875	$26\frac{1}{4}$	—	$26\frac{1}{4}$	198,048
47	Londonderry and Lough Swilly	1875	$8\frac{3}{4}$	6	$14\frac{3}{4}$	107,562
59	Limerick and Castleconnell	1877	$5\frac{1}{2}$	$7\frac{1}{2}$	13	90,375
	Total		$54\frac{1}{2}$	$13\frac{1}{2}$	68	530,904

LINES PURCHASEABLE UNDER THE ACT OF 1844 BETWEEN 1878–1889.

No. in Appendix and on Map.	Name of Railway.	Date.	Length purchaseable before 1888.	Total Share Capital and Borrowed Money.
			Miles.	£
29	Carrickfergus and Larne	1882	$15\frac{1}{2}$	124,887
32	Cork and Kinsale Junction	1881	$10\frac{3}{4}$	96,973
34	Cork and Macroom Direct	1883	$23\frac{3}{4}$	151,778
38	Dublin and Meath	1880	$35\frac{1}{2}$	482,562
42	Cork and Limerick Direct	1882	$17\frac{1}{2}$	119,954
44	Enniskillen, Bundoran, and Sligo	1883	$35\frac{1}{2}$	429,525
45	Finn Valley	1882	$13\frac{1}{4}$	76,884
49	Athenry and Tuam	1880	$15\frac{1}{2}$	90,417
50	Great Northern and Western	1879–1883	$82\frac{3}{4}$	628,201
54	Banbridge, Lisburn, and Belfast	1880	15	197,444
57	Kilkenny Junction	1882	19	277,545
62	Rathkeale and Newcastle	1883	10	73,046
64	West Cork	1882	$17\frac{1}{2}$	317,522
	Total	—	311	3,066,738

SUMMARY OF PRECEDING TABLES.

	Length.	Total Share Capital and Borrowed Money.
	Miles.	
Purchaseable on 1st of January 1869:		
Five entire lines	$134\frac{3}{4}$	
Sixteen lines partly purchaseable	$749\frac{9}{10}$	
Total	$884\frac{13}{20}$	
Purchaseable after 1st of January 1869:		
Parts of 16 lines above mentioned	$582\frac{7}{10}$	
Five lines wholly or in part purchaseable between 1870–1878	$54\frac{1}{5}$	
Parts of same lines subsequently purchaseable	$13\frac{1}{2}$	
Thirteen lines purchaseable between 1878–1888	311	
Total length ultimately purchaseable	1846	
Parts of three lines not purchaseable as having been authorized prior to 1844	$62\frac{1}{4}$	
Total	$1,908\frac{1}{4}$	£27,527,286

TABLE (GG.)—NUMBER of the DIRECTORS, and of the different CLA

No. in Appendix and on Map.	NAME OF RAILWAY.	Directors.	Auditors.	General Manager's Office.		Secretary's Office.		Accountant's Office, including Cashiers.		Traffic Superintendent's Office.		M
				General Managers.	Clerks.	Secretary.	Clerks.	Accountant.	Clerks.	Traffic Superintendent.	Clerks.	Goods Manager.
26	Belfast and County Down	8	2	1	1	1	1	1	4	—	—	1
27	Belfast, Holywood, and Bangor	3	2	1	3	1	—	1	—	—	—	—
28	Belfast and Northern Counties	13	2	1	4	1	—	1	12	—	—	1
29	Carrickfergus and Larne	12	2	—	—	1	—	—	—	—	Staff supplie	
30	Londonderry and Coleraine	5	2	—	—	—	—	—	—	—	Staff supplie	
31	Cork and Bandon	7	2	1	2	1	1	—	—	—	—	—
32	Cork and Kinsale	5	2	—	—	1	—	—	—	—	Staff supplie	
33	Cork, Blackrock, and Passage	12	2	—	—	1	—	1	—	—	—	—
34	Cork and Macroom Direct	10	2	1	—	1	—	1	1	—	—	—
35	Dublin and Belfast Junction	11	2	—	—	1	1	1	4	1	1	—
36	Banbridge Junction	5	1	—	—	1	—	—	—	—	Staff supplie	
37	Dublin and Drogheda	12	2	1 solicitor		1	4	1	3	—	—	—
38	Dublin and Meath	4	1	1	1	1	—	1	2	—	—	—
39	Dublin, Wicklow, and Wexford	12	2	—	—	1	2	1	2	1	2	—
40	Dublin and Kingstown	9	—	—	—	1	—	—	—	—	Staff supplie	
41	Great Southern and Western	14	2	—	—	1	7	1	26	1	8	—
42	Cork and Limerick Direct	7	2	—	—	1	—	—	—	—	Staff supplie	
43	Irish North Western	12	2	—	—	1	2	1	10	1	5	—
44	Enniskillen, Bundoran, and Sligo	9	2	—	—	1	1	—	—	—	Staff supplie	
45	Finn Valley	8	2	—	—	1	—	—	—	—	Staff supplie	
46	Londonderry and Enniskillen	5	2	—	—	—	—	—	—	—	Staff supplie	
47	Londonderry and Lough Swilly	8	2	1	—	1	—	1	1	—	—	—
48	Midland Great Western	8	2	1	6	1	2	1	14	—	—	1
49	Athenry and Tuam	6	2	—	—	1	1	—	—	—	Staff supplie	
50	Great Northern and Western	10	2	—	—	1	—	—	—	—	Staff supplie	
51	Newry and Armagh	12	2	1	1	—	—	1	1	1	2	—
52	Newry, Warrenpoint, and Rostrevor	7	2	1	—	1	1	1	—	—	—	
53	Ulster	12	2	1	5	1	3	1	15	—	—	1
54	Banbridge, Lisburn, and Belfast	8	2	—	—	1	—	—	—	—	Staff supplie	
55	Portadown, Dungannon, and Omagh	5	2	—	—	1	—	—	—	—	Staff supplie	
56	Waterford and Kilkenny	9	2	—	—	1	4	—	—	—	—	—
57	Kilkenny Junction	9	2	—	—	—	—	—	—	—	Staff supplie	
58	Waterford and Limerick	10	2	—	—	1	6	1	2	1	5	—
59	Limerick and Castleconnell	5	2	—	—	1	—	—	—	—	Staff supplie	
60	Limerick and Ennis	12	1	—	—	1	—	—	—	—	Staff supplie	
61	Limerick and Foynes	14	2	—	—	1	—	—	—	—	Staff supplie	
62	Rathkeale and Newcastle	5	—	—	—	1	—	—	—	—	Staff supplie	
63	Waterford and Tramore	5	1	—	—	1	1	—	—	—	—	—
64	West Cork	5	2	1	—	1	—	—	—	—	—	—
		333	70	13	23	35	37	17	97	6	23	4

s and MEN employed on the several RAILWAYS completed and carrying TRAFFIC.

Traffic Department.				Storekeeper's Office.			Locomotive Department.					Permanent Way Department.				Total Permanent Staff.	Total Temporary Staff.	Total of Permanent and Temporary Staff.	No. in Appendix and on Map.
Station Masters.	Clerks.	Guards.	Porters and others.	Storekeeper.	Clerks.	Porters and others.	Superintendent.	Clerks.	Engine Drivers and Firemen.	Fitters, Carpenters, Carriage Examiners, Blacksmiths, &c.	Cleaners, Cokemen, Labourers, and others.	Engineers.	Clerks.	Inspectors and Gangers.	Platelayers, Labourers, and others.				
13	2	8	95	1	1	—	1	1	25	31	32	1	1	24	97	363	—	363	25
1	2	3	30	—	—	—	Work done by Belfast and County Down Company.							5	{ 13 / 8 }	75	8	83	27
45	26	22	239	1	1	2	1	4	{ 37 / 1 }	82	{ 63 / 2 }	2	1	{ 58 / 1 }	204 / *133	834	137	971	28
d Northern Counties Company.				—	—	—	—	—	—	—	—	—	—	—	—	15	—	15	29
d Northern Counties Company.				—	—	—	—	—	—	—	—	—	—	—	—	7	—	7	30
10	2	4	71	—	—	—	1	1	6	19	12	—	—	14	41	200	—	200	31
Bandon Company.				—	—	—	—	—	—	—	—	—	—	—	—	8	—	8	32
3	—	2	17	—	1	1	1	—	4	{ 15 / 2 }	5	—	—	4	{ 10 / 2 }	79	4	83	33
6	1	2	17	—	—	—	1	1	4	7	4	—	—	11	26	96	—	96	34
10	2	7	76	1	1	6	1	—	20	63	36	1	—	2	130	383	—	383	35
d Belfast Junction Company.				—	—	—	—	—	—	—	—	—	—	—	—	7	—	7	36
19	24	15	144	1	—	2	2	3	26	66	34	1	—	28	99	495	—	495	37
8	—	4	24	1	—	—	1	—	8	8	8	—	—	12	30	115	—	115	38
38	26	20	201	1	2	2	1	1	48	54	48	1	1	46	228	741	—	741	39
Wicklow, and Wexford Company.				—	—	—	—	—	—	—	—	—	—	—	—	10	—	10	40
67	78	82	622	1	13	7	2	25	155	485	329	3	4	{ 156 / 18 }	505 / 694	2,594	712	3,306	41
thern and Western Company.				—	—	—	—	—	—	—	—	—	—	—	—	10	—	10	42
44	45	17	299	1	2	2	1	—	48	120	98	1	2	5	355	1,074	—	1,074	43
th-western Company.				—	—	—	—	—	—	—	—	—	—	—	—	13	—	13	44
h-western Company.				—	—	—	—	—	—	—	—	—	—	—	—	11	—	11	45
h-western Company.				—	—	—	—	—	—	—	—	—	—	—	—	7	—	7	46
5	—	1	12	—	—	—	1	—	2	1	2	—	—	—	10	48	—	48	47
52	16	32	402	1	2	5	1	1	74	245	122	1	1	{ 118 / 13 }	563 / 355	1,717	368	2,085	48
Great Western Company.				—	—	—	—	—	—	—	—	—	—	—	—	10	—	10	49
Great Western Company.				—	—	—	—	—	—	—	—	—	—	—	—	13	—	13	50
4	—	4	34	—	—	—	1	—	8	14	8	—	—	10	35	143	—	143	51
—	1	2	{ 13 / 2 }	—	—	—	—	—	2	{ 3 / 1 }	3	—	—	1	6	45	3	48	52
31	67	28	341	1	1	3	1	3	43	111	57	1	1	51	164	956	—	956	53
mpany.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	11	—	11	54
mpany.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	8	—	8	55
6	—	4	24	1	—	—	1	3	12	36	12	—	—	10	31	159	1	160	56
d and Kilkenny Company.				—	—	—	—	—	—	—	—	—	—	—	—	11	—	11	57
36	—	18	196	1	1	1	1	2	36*	113	23	1	2	50	{ 150 / 29 }	683	29	712	58
d and Limerick Company.				—	—	—	—	—	—	—	—	—	—	—	—	8	—	8	59
d and Limerick Company.				—	—	—	—	—	—	—	—	—	—	—	—	14	—	14	60
d and Limerick Company.				—	—	—	—	—	—	—	—	—	—	—	—	17	—	17	61
d and Limerick Company.				—	—	—	—	—	—	—	—	—	—	—	—	6	—	6	62
2	—	1	6	—	—	—	1	—	2	—	2	1	—	3	6	32	—	32	63
3	—	2	10	—	—	—	1	—	2	1	2	—	2	5	18	55	—	55	64
403	292	278	2,875	12	26	31	21	45	563	1,477	902	14	15	645	3,942	11,073	1,262	12,335	

* Temporary when ballasting the line. † Pensioned servants.

TABLE (III.)—NUMBER of LOCOMOTIVE ENGINES and TENDERS, and of CARRIAGE and WAGON STOCK belonging to the several RAILWAY COMPANIES in IRELAND on 30th June 1867.

Number in Appendix and on Map.	Name of Railway Company.	Locomotive Engines and Tenders.				Carriage Stock.										
		Passenger Engines.	Goods Engines.	Tank Engines.	Total Number of Engines.	First Class.	Second Class.	Third Class.	Compositie.	Luggage Vans.	Mail and Sorting Vans.	Horse Boxes.	Carriage Trucks.	State Carriages.	Passenger Brake Vans.	Total Number of Carriage Stock.
26	Belfast and County Down	2	1	8	11	9	7	12	16	8	—	3	—	—	—	55
27	Belfast, Holywood, and Bangor	—	—	3	3	18	23	—	5	—	—	—	—	—	4	50
28	Belfast and Northern Counties	19	12	8	39	11	6	40	36	—	—	10	8	—	14	125
31	Cork and Bandon	2	3	3	8	1	—	7	5	—	—	2	4	—	5	24
33	Cork, Blackrock, and Passage	—	—	3	3	3	2	6	2	—	—	—	—	—	2	15
34	Cork and Macroom	—	—	2	2	2	3	4	—	—	—	—	—	—	2	11
35	Dublin and Belfast Junction	11	6	2	19	7	6	12	10	6	—	10	10	—	12	61
37	Dublin and Drogheda	12	8	2	22	8	10	24	21	—	—	12	12	—	12	99
38	Dublin and Meath	4	3	—	7	2	6	10	4	—	—	6	—	—	1	29
39	Dublin, Wicklow, and Wexford	5	11	27	43	27	60	50	6	20	2	6	4	—	—	175
41	Great Southern and Western	53	50	14	117	68	54	82	25	42	12	52	30	1	—	366
43	Irish North-Western	13	13	8	34	—	4	23	26	25	—	8	8	—	—	94
47	Londonderry and Lough Swilly	—	—	3	3	—	—	4	2	—	—	—	—	—	1	7
48	Midland Great Western	35	27	4	66	3	9	54	47	25	—	38	22	1	—	199
51	Newry and Armagh	1	2	4	7	2	1	4	5	—	—	2	1	—	3	18
52	Newry, Warrenpoint, and Rostrevor	—	—	4	4	3	3	3	—	1	—	—	—	—	—	10
53	Ulster	23	13	—	36	14	12	31	14	20	3	10	5	—	—	109
56	Waterford and Kilkenny	3	2	2	7	6	11	6	6	3	—	4	2	—	—	38
58	Waterford and Limerick	9	14	1	24	7	6	21	12	—	—	9	7	—	9	71
63	Waterford and Tramore	—	—	4	4	6	—	7	1	—	—	—	—	—	1	15
64	West Cork	—	—	2	2	1	—	6	4	—	—	2	2	—	2	17
	Total	192	165	104	461	198	223	406	247	150	17	174	115	2	56	1,588

—*continued.*

Number in Appendix and on Map.	Name of Railway Company.	Total Number of Carriage Stock, as above.	Wagon Stock.														Total Carriage and Wagon Stock.
			Low Flat or Sided.	Open Box.	High Sided.	Covered.	Cattle.	Timber.	Mineral.	Powder Vans.	Ballast.	Tipping.	Boiler Trucks.	Store Vans.	Goods Brakes.	Total Number of Wagon Stock.	
26	Belfast and County Down	55	89	12	—	58	30	2	—	—	21	—	—	—	5	217	272
27	Belfast, Holywood, and Bangor	50	—	—	—	3	—	—	—	—	—	—	—	—	—	3	53
28	Belfast and Northern Counties	125	—	365	—	261	44	14	—	—	28	—	2	—	13	727	852
31	Cork and Bandon	24	24	—	—	36	—	2	—	—	—	—	—	—	—	62	86
33	Cork, Blackrock, and Passage	15	—	—	—	—	—	—	—	—	2	—	—	—	—	2	17
34	Cork and Mackroom	11	—	10	—	25	—	—	—	—	8	—	—	—	—	43	54
35	Dublin and Belfast Junction	61	100	5	—	119	—	6	—	—	16	—	—	—	—	246	307
37	Dublin and Drogheda	99	18	—	12	144	42	10	—	—	36	—	—	—	1	263	362
38	Dublin and Meath	29	10	—	—	21	20	—	—	—	—	—	—	—	—	51	80
39	Dublin, Wicklow, and Wexford	175	142	24	—	163	—	6	112	—	20	31	—	—	—	498	673
41	Great Southern and Western	366	—	234	—	1,247	70	40	—	—	145	—	—	—	58	1,794	2,160
43	Irish North-Western	94	—	149	—	331	70	6	—	—	52	—	—	—	—	608	702
47	Londonderry and Lough Swilly	7	12	—	—	4	4	—	—	—	—	—	—	—	—	20	27
48	Midland Great Western	199	20	—	—	776	288	30	—	2	66	—	—	—	14	1,196	1,395
51	Newry and Armagh	18	—	75	—	* 78	8	16	—	—	5	—	—	—	—	182	200
52	Newry, Warrenpoint, & Rostrevor	10	—	—	51	12	4	—	—	—	2	—	—	—	—	69	79
53	Ulster	109	165	—	228	147	60	22	—	—	20	—	—	—	10	652	761
56	Waterford and Kilkenny	38	—	5	—	74	32	6	—	—	10	—	—	—	3	130	168
58	Waterford and Limerick	71	—	174	—	231	50	18	—	—	25	—	—	5	7	510	581
63	Waterford and Tramore	15	4	—	—	—	—	—	—	—	4	—	—	—	—	8	23
64	West Cork	17	—	10	—	20	—	2	—	—	—	—	—	—	2	34	51
	Total	1,588	584	1,063	291	3,750	727	180	112	2	460	31	2	5	113	7,315	8,903

APPENDIX, PART II.—DOCUMENTS AND RETURNS.

1.—COPY of TREASURY MINUTE, dated the 14th of October 1867, addressed to Railway Companies in Ireland.

MY Lords read the Railways (Ireland) Act 1867, 30 & 31 Vict. c. 104. s. 1.

In accordance with the powers therein contained, and in the terms thereof, my Lords are now pleased to direct that every railway company in Ireland do, on the 15th November next, furnish to them a full and true account of all moneys received and paid during a period of three years previous to the date of the last half-yearly account of such company on account of such railway, or of any undertaking connected therewith (distinguishing, if the said railway should be a branch railway, or one worked in common with other railways, the receipts, and giving an estimate of the expenses, on account of the said railway, from those on account of the trunk line, or other railways), by the directors of the company to whom such railway belongs, or by whom the same may be worked; and also an account of the assets and liabilities of such company at the commencement of each of the said three years, and at the expiration of the last of the said three years, such accounts to be duly audited and certified under the hands of two or more of the directors of such company.

Transmit a copy of the above Minute to each of the companies named in the schedule,* and state that it appears to my Lords that their Lordships will carry into effect the intentions of Parliament with the least inconvenience to the companies, and with the greatest advantage to the inquiry, by requiring that the accounts to be rendered in the first instance shall be, as far as possible, the accounts furnished by the directors to their shareholders at each yearly or half-yearly meeting during the three years previous to the date of the last half-yearly account, but including that account; and that any further information required by their Lordships to be given, as directed in this Minute, which may not be contained in such accounts so furnished to the shareholders, shall be given in a supplementary statement accompanying such accounts.

Should these accounts and statements, when so rendered, appear to their Lordships to be insufficient in substance, or inconvenient in form, my Lords will direct a further communication to be made to the directors of the company by whom they have been furnished, so that they may comply in all respects with what their Lordships require.

2.—COPY of LETTER from the SECRETARY of the TREASURY to the SECRETARY of the COMMISSIONERS extending the inquiries of the Commission to Canal Companies.

Treasury Chambers,
SIR, Nov. 1, 1867.

IN reply to your letter of this day's date, I am directed by the Lords Commissioners of Her Majesty's Treasury to request that you will acquaint the Railways (Ireland) Commissioners that my Lords are desirous of having an investigation by them of the accounts of any canal company who are willing to submit them to the Commissioners, and whose undertaking can be considered in any way competing with any railway company's line in the transmission of goods or passengers, and also an examination of the works of such canal company should like consent be given.

I am, Sir,
Your obedient Servant,
(Signed) GEORGE WARD HUNT.
W. N. Hancock, Esq., LL.D.

3.—COPY of LETTER from the SECRETARY of the TREASURY to the COMMISSIONERS, dated the 4th of April 1868, directing particulars to be furnished in the Report, with respect to agreement for limiting the charges for traffic.

Treasury Chambers,
GENTLEMEN, April 4, 1868.

I AM directed by the Lord Commissioners of Her Majesty's Treasury to inform you that the Marquis of Clanricarde lately stated in the House of Lords, that the Irish railway companies had entered into agreements among themselves and with canal companies regulating the tariff to be charged for the transport of goods; that in consequence goods are now conveyed at higher rates than were paid before the construction of railways, and that the public has no means of checking or controlling the monopolies thus created.

It appears to my Lords that it would be very desirable to take steps for ascertaining, as far as may be practicable, whether the agreements in force between the companies in question are of a nature to justify the charges put forward by Lord Clanricarde, and I am therefore to instruct you to include in your forthcoming report the particulars of all such agreements with respect to limiting the charges for traffic, the accommodation to the public, or the assistance to be given to railway extensions or new railways in cases where there was a competition between routes of communication for the traffic of any district or place.

I am, Gentleman,
Your obedient Servant,
(Signed) G. SCLATER BOOTH.
The Commissioners of Inquiry
into Irish Railways,
2, Victoria Street.

4.—RETURN of the PARTICULARS of all AGREEMENTS that IRISH RAILWAY COMPANIES have entered into among themselves or with CANAL COMPANIES with respect to limiting the Charges for Traffic, the Accommodation to the Public, or the Assistance to be given to Railway Extensions or new Railways in cases where there was a competition between routes of communication for the traffic of any district or place.

1.—*Abstract of Award of Messrs. Watkin and Huish of the 8th of February* 1860, *applicable to the Midland Great Western and Great Southern and Western Railway Companies.*

Application to be made to Parliament for a lease of the Royal Canal for 330,000*l.*, half to each company. to be worked by a joint committee. Canal to be worked under agreement in the meantime.

Award accompanied by a map upon which a line is drawn, thus:—

From Dublin west through Edenderry to Athlone; thence following the course of the Shannon to the

* The schedule included 59 companies. The Minute was afterwards extended to all the companies included in the report, 84 in all.

middle of Lough Derg; thence west through Ennis to a point between Kilrush and Kilkee, terminating at the mouth of the Shannon, equidistant between Loop Head and Kerry Head.

North, north-west, and north-east of this line to be considered the district of the Midland Great Western Company. South, south-east, and south-west that of the Great Southern and Western Company.

Midland Great Western to assign to the Great Southern and Western their share interest in the Castleconnell Railway Company.

Neither company shall make, promote, assist, or encourage any lines of railway or branch canal to any point beyond the boundary line now awarded or intended to join a portion of a line in contravention of such boundary, nor in the event of any lines being made by other parties shall either of the companies directly or indirectly enter into any alliance or arrangement to or from any point which can fairly be considered as within the scope and intention of this award.

Traffic between Ennis and Dublin to be common to both, and equal fares and rates by each, and in case of the opening of the Ennis and Athenry Railway the traffic from Ennis shall be equally divided.

Traffic between Dublin and Athlone to be divided thus :—

From 1860 to 1865.

——	Passengers.	Goods and Cattle.
Midland Great Western	65 per cent. -	55 per cent.
Great Southern and Western.	35 „ „ -	45 „ „

From 1865 to 1870 inclusive and thereafter in perpetuity.

——	Passengers.	Goods and Cattle.
Midland Great Western	60 per cent. -	55 per cent.
Great Southern and Western.	40 „ „ -	45 „ „

20 per cent. allowed for working. Neither company to evade these provisions by re-booking, charging lower proportionate rates at contiguous or intermediate places, or by bonuses, drawbacks, undue credits, or the like.

Dublin and Clara traffic to be put into a common fund, equal fares and rates to be charged by both routes. To be divided as under :—

——	Passengers.	Goods and Cattle.
For first five years after opening :—		
Midland Great Western	35 per cent. -	45 per cent.
Great Southern and Western.	65 „ „ -	55 „ „
After first five years in perpetuity:—		
Midland Great Western	40 „ „ -	45 „ „
Great Southern and Western.	60 „ „ -	55 „ „

Provisions of award not to be evaded. *See* Dublin and Athlone *ante*.

Companies shall interchange through rates and fares between non-competitive points. Local traffic not to be interfered with.

Steamers to be worked on the Shannon between Athlone and Killaloe (after the purchase of the canal) under the superintendence of the Joint Committee. Companies to book through from all towns and places on their line to towns and places on the Shannon. Steamboats, &c., required for and now used by Midland Great Western shall, after purchase of canal, be worked by the Joint Committee, who shall fix the payment to be allowed to Midland Great Western Company for use and maintenance of plant, and settle the proportion of profit or loss to be borne by each company.

Award subject to a further award to be made on or before 1st October next.

II.—*Abstract of Final Award dated 25th September 1860, applicable to Midland Great Western and Great Southern and Western Railway Companies.*

Refers to previous award and recites its provisions.

States that the railway companies did apply to Parliament for the purchase of the Grand Canal, but the House of Lords decided on certain toll clauses proposed by the Board of Works, Ireland, which were considered to be unremunerative, and the bill was withdrawn.

Companies to observe the provisions of the previous award, notwithstanding the failure of the Grand Canal Leasing Bill, which they are capable of performing irrespective of the canal.

Map or plan to be observed.

So much of award confirmed as prohibits the making or assisting in the formation of or alliance with any lines of railway by either of the said companies in the district assigned to the other of them.

Transfer of Castleconnell shares also confirmed.

Ennis, Athlone, Clara traffic divisions also confirmed.

Neither company to enter into treaty for the lease or purchase of the Grand Canal without the consent of the other company, but either may enter into working arrangements with the canal for traffic affected by canal.

As companies have failed to obtain the canal they shall not be required to work the steamboat traffic on the Shannon in manner recited by former award; but the steamboats, barges, vessels, and other plant belonging to the Midland Great Western Company, and hitherto used by that company in working the Shannon traffic shall be valued* by Mr. Martin Samuelson of Hull, and the Great Southern and Western Company shall pay to the Midland Great Western Company 55 per cent. of such certified value, and become joint owners of such plant; plant to be used jointly or otherwise dealt with from time to time as the said two companies may agree.

Disputes to be settled by arbitration.

III.—*Abstract of an Agreement between Great Southern and Western, Waterford and Limerick, Cork and Limerick, and London and North-western Railway Companies, Waterford and Steam Ship Company, Cork and Liverpool Steam Ship Company, City of Dublin Steam Packet Company.*

Agreement to take effect from 1st June 1864 for 12 months, and afterwards terminable by three months' notice.

Provides for through rates on traffic arising at or destined for places on these lines by way of Cork, Waterford, Dublin and Liverpool, and Dublin and Holyhead, and for the division thereof.

Rates to be the same by all routes, and not to be altered except by consent.

Traffic to and from Limerick, Limerick Junction, and Tipperary with Liverpool, and stations in England north of Birmingham inclusive, to form a common fund. The Cork route having an interest in Limerick traffic only.

Unconsigned traffic from the Great Southern and Western Company line to be given exclusively to the City of DublinCompany, and for places common to that company and the London and North-western Company to be equally divided between them. The City of Dublin Company handing such traffic and all other unconsigned traffic to the London and North-

Note.—By an award dated 28th December 1860, Mr. Samuelson valued the plant at 7,000*l*.

...rn Company at Liverpool. The Cork and Water-...d Steam Companies to hand to London and North-...stern Company at Liverpool all traffic not otherwise ...cially consigned. In like manner the City of Dublin ...pany and the London and North-western Com-...y shall deliver to the Great Southern and Western ...mpany all unconsigned traffic for their district.

No allowance, privilege, or bonus to be given to ...duce goods to be sent by any route.

The Waterford and Limerick and the Cork and ...merick Direct Railway Companies undertake that ...ll traffic consigned through them by other routes ...han *viâ* Liverpool or Holyhead between places in England and the places in Ireland, to which this ...greement refers, shall not be booked through, and ...hall be charged the ordinary local rates.

IV.—Abstract of Agreement between the Glasgow and Londonderry Steam Packet Company, Belfast and Northern Counties, Londonderry and Coleraine, Ulster, Portadown, Dungannon, and Omagh, and Irish North-western Railway Companies.

To pay John Cameron, of Glasgow, acting for the Steam Packet Company, for four years, from 1st December 1866, the sum of 400*l.* a year, in consideration of his discontinuing the calling of his steam-packets at the port of Belfast, either on the outward or return voyage to or from Morecombe to Londonderry for four years from the above date.

V.—Abstract of Agreement between the City of Dublin Steam Packet Company, and the Dublin and Drogheda, Dublin and Belfast Junction, and Ulster Railway Companies for traffic between Dublin and Belfast.

Under an award by Mr. K. Morison, of London, dated 16th January 1858.

To apply for two years from date and afterwards subject to three months notice.

The sailings of the steamboats to be reduced to one trip each way between Dublin and Belfast per week.

The companies to pay to the steamboat company for passenger traffic 1,000*l.* per annum clear, and the receipts of the steamboat company to be handed over to the railway companies without deduction.

The goods traffic to be divided one half to the steamboat company, and one half to the railway companies, 25 per cent. to be allowed to the company carrying the excess. Railway companies have power to fix the fares.

VI.—Abstract of Agreement between the Midland Great Western Railway Company, and the Grand Canal Company.

The traffic to and from Dublin and Lanesboro', Carrick on Shannon, and all places above Athlone, and all traffic conveyed to Athlone by any other means than the Shannon below Athlone to be given to the Midland Great Western Company.

The river trade between Limerick and Carrick on Shannon and intermediate places to be considered as belonging to the Grand Canal.

Provides for differential rates in favour of canal. The Midland Company fixing rate from Dublin to Woodlawn station proportionately higher than the rates to Ballinasloe.

Dated, 2nd January 1864.

The Great Southern and Western Company to cease plying boats on the Shannon during the continuance of this agreement.

VII.—*Abstract of award of Captain Huish, dated 12th October* 1861, *between the Irish North-western and the Ulster Railway Companies.*

For the prevention of undue competition between the Ulster Company as lessees of the Portadown, Dungannon, and Omagh Railway and the Irish North-western Company as lessees of the Londonderry and Enniskillen Railway for traffic between Omagh and Londonderry and Omagh and Belfast.

That the Irish North-western Company shall book through by their Enniskillen route traffic arriving at stations between Londonderry and Omagh, and destined for places to which they have through booking south of Dundalk as far as Dublin, based on the mileage by the Portadown route.

The Portadown route being 13 miles shorter than the Enniskillen route.

That the public be left to choose either route, and trains be arranged to accommodate them by either route.

That the Irish North-western Company take on by their first train the traffic by the Portadown route passing northward, but their express trains be not required to stop more than five minutes, and ordinary trains more than ten minutes.

That carriages and waggons be taken through by the Irish North-western Company, providing they contain a certain number of passengers or weight of goods.

Similar clauses for dealing with traffic southward by the Ulster Company.

The same mileage rates charged by the Irish North-western for passengers and goods between Omagh and Londonderry shall be the mileage rates charged by the company using the line *viâ* Portadown to Belfast, except by mutual consent. Each company to book through between Londonderry *viâ* Omagh, Portadown, and Belfast and intermediate places at such rates as, having reference to the rates of the Northern Counties Railway, might be agreed on.

That this award shall not be evaded by either company by making private arrangements with foreign companies, steam packet companies, or others. Local rates between Omagh and Belfast and Omagh and Londonderry to be so fixed as not to entrench upon or nullify the mileage rate arrangement already awarded.

VIII.—*Abstract of Agreement between the Midland, Great Western Company and the Athenry and Tuam Company. Dated April* 26, 1859.

The Athenry and Tuam Company shall not during the period of this agreement extend or apply for powers to extend their line of railway beyond Tuam to or towards or in the direction of Castlebar, Westport, or Ballina, nor assist or encourage others to do so, without the consent in writing of the Midland Great Western Company.

This agreement is set out in the Schedule of the Company's Leasing Act of 1860 (Stat. 23rd and 24th Vict. cap. 182).

IX.—*Abstract of an Agreement, dated 1st August* 1859, *between the Midland, Great Western, and the Great Northern and Western Companies.*

Provides for through booking between all stations on the Great Northern and Western line and the Midland line. The fares to be the sum of the two companies rates.

No rates from Tuam or from any station on the Athenry and Tuam line to any station on the Midland line or *vice versâ* to be fixed at a lower mileage rate than the joint rates fixed as above.

This agreement was approved by the Board of Trade on the 16th of August 1859.

5. RETURN of ADVANCES made by the Public Works Loan Commissioners to Railway Companies in Irelan
made, Rate of Interest, Principal repaid, Principal unpaid, Interest in arre

Name of Railway.		£	Total Advances. £	Date of Security.	Period for which the Loan was made.	Rate of Interest.
Dublin and Drogheda :—						
1st loan—1st advance		30,000		16th Dec. 1842	20 years - - -	5 per cent., reduced to 4 per cent.
	2nd „	15,000		14th July 1843	„ - - -	„
	3rd „	15,000		25th Aug. „	„ - - -	„
	4rd „	15,000		22 Sept. „	„ - - -	„
	5th „	15,000		1st Dec. „	20 years, but wholly repaid with interest in two years from date of advance.	5 per cent.
	6th „	15,000		1st March 1844		„
	7th „	15,000		31st May „		„
2nd loan—1st	„	20,000		16th Sept. 1847	20 years - - -	5 per cent., reduced to 4 per cent.
	2nd „	16,000	156,000	28th Feb. 1848 -	„ - - -	„
Irish North-Western :—						
1st advance		20,000		28th Oct. 1853 -	20 years, extended to 30 years by Treasury Warrant.	4 per cent.
	2nd „	20,000		7th July 1854 -	„ 29 „	„
	3rd „	20,000		7th Sept. 1855 -	„ 28 „	„
	4th „	20,000		2nd May 1857 -	„ 26 „	„
	5th „	20,000	100,000	1st July 1858 -	„ 25 „	„
Waterford and Kilkenny :—						
1st loan —1st advance		23,000		27th Aug. 1847	Each of the sums was made repayable in 20 years from date of advance, but by Treasury Warrant of 20 June 1866, the balances unpaid were amalgamated, and made repayable, with interest at 3½ per cent. in 22 years from 8 July 1866.	5 per cent., reduced to 4 per cent., and subsequently to 3½ per cent.
2rd	„	30,000		17th Nov. „		
3rd	„	20,000		16th Aug. 1848		
4th	„	10,000		31st Oct. 1849 -		
2nd loan—1st	„	10,000		2nd April 1852 -		
2nd	„	10,000		10th Sept. „		
3rd	„	10,000		4th Jan. 1853 -		
4th	„	10,000	123,000	8th July „ -		
Great Southern and Western :—						
1st advance		125,000		31st Aug. 1847	20 years, wholly repaid in 1853	5 per cent. reduced to 4 per cent.
	2nd „	125,000		5th Nov. „ -	„ „ „	„
	3rd „	125,000		6th April 1848 -	„ „ 1852	„
	4th „	100,000		26th Sept. „	„ „ „	„
	5th „	20,000	495,000	11 Jan. 1849 -	„ „ „	„
Midland Great Western (of Ireland):—						
1st advance		100,000		25th Oct. 1849 -	45 years - - -	3½ per cent. half yearly.
	2nd „	100,000		5th Sept. 1850 -	„ - - -	„
	3rd „	100,000		20th Feb. 1851 -	„ - - -	„
	4th „	100,000		25th June „ -	„ - - -	„
	5th „	50,000		3rd Nov. „ -	„ - - -	„
	6th „	50,000	500,000	29th April 1852	„ - - -	„
Cork, Blackrock, and Passage :—						
1st advance		5,000		20th May 1850	20 years - - -	5 per cent., reduced to 4 per cent.
	2nd „	5,000		11th July „ -	„ - - -	„
	3rd „	3,000		21st Jan. 1851 -	„ - - -	„
	4th „	2,000	15,000	22nd April „	„ - - -	„
Cork and Bandon :—						
1st advance		10,000		17th Aug. 1850-	7 years, extended to 20 years -	
2nd	„	10,000		4th Dec. „	„ -	„
3rd	„	10,000		2nd May 1851 -	„ -	„
4th	„	5,000	35,000	28th July „	„ -	„
Irish South-Eastern :—						
1st advance		9,000		1st Nov. 1850 -	20 years - - -	„
2nd	„	9,000		15th Jan. 1851 -	„ - - -	„
3rd	„	9,000		4th June „	„ - - -	„
4th	„	8,000	35,000	20th Feb. 1852 -	„ - - -	„
Dublin and Belfast Junction :—						
1st advance		25,000		26th Dec. 1850 -	20 years; wholly repaid in 1852.	5 per cent., reduced to 4 per cent.
2nd	„	25,000		8th Nov. 1851 -		
3rd	„	25,000	75,000	31 Jan. 1852 -		

...owing as to each the Name of the Railway, Total Advances, Date of Security, Period for which the Loan was ...d Costs paid to the Solicitor of the Commissioners up to the 31st of January 1868.

...cipal repaid.	Total repaid by each Railway.	Principal unpaid.	Total unpaid by each Railway.	Interest in Arrear.	Total Interest due by each Railway.	Costs paid to Solicitor.	Total Costs paid by each Railway.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
...,000 0 0						188 7 0	
...,000 0 0						70 0 10	
...,000 0 0						52 12 8	
...,000 0 0						53 19 8	
...,000 0 0						56 14 6	
...,000 0 0						406 9 2	
...,000 0 0						58 12 11	
...,000 0 0						207 2 6	
...,724 12 3		1,275 7 9				132 9 4	
	154,724 12 3		1,275 7 9	- - -	- - -		1,226 8 7
...,452 13 5		10,547 6 7		428 16 5		287 16 7	
...,874 7 6		11,125 12 6				217 5 7	
...,336 0 5		12,663 19 7		511 13 2		298 16 11	
...,830 19 7		14169 0 5				313 13 9	
...,837 4 4		15,162 15 8				373 3 6	
	36,331 5 3		63,668 14 9		940 9 7		1,490 16 4
						214 13 2	
						78 15 0	
						401 12 10	
...,117 8 10		43,882 11 2				331 19 6	
	79,117 8 10		43,882 11 2	- - -	- - -	425 19 6	
						223 13 5	
						186 9 11	
						266 6 5	
							2,129 9 9
...,000 0 0						288 9 8	
...,000 0 0						130 5 0	
...,000 0 0						552 1 2	
...,000 0 0						550 9 4	
...,000 0 0						503 3 0	
	495,000 0 0	- - -	- - -	- - -	- - -		2,024 8 2
...,711 5 8		86,288 14 4				276 11 8	
...,782 3 6		88,217 16 6				235 0 9	
...,842 8 8		89,157 11 4				347 0 8	
...,918 17 0		90,081 3 0				426 2 7	
...,505 11 6		45,494 8 6				400 0 11	
...,505 11 6		45,494 8 6				397 19 7	
	55,265 17 10		444,734 2 2	- - -	- - -		2,082 16 2
...,169 0 0		831 0 0				151 10 3	
...,169 0 0		831 0 0				112 2 7	
...,336 0 0		664 0 0				282 2 7	
...,556 0 0		444 0 0				163 14 5	
	12,230 0 0		2,770 0 0	- - -	- - -		709 9 10
...,000 0 0		2,000 0 0		85 2 11		212 1 11	
...,500 0 0		2,500 0 0		118 6 0		112 16 9	
...,058 16 0		2,941 4 0		129 11 5		493 14 3	
...,529 8 0		1,470 12 0		62 9 11		288 3 1	
	26,088 4 0		8,911 16 0		395 10 3		1,106 16 0
...,000 0 0		2,000 0 0				273 19 5	
...,000 0 0		2,000 0 0				140 17 1	
...,000 0 0		2,000 0 0				250 4 5	
...,850 0 0		2,150 0 0				324 6 5	
	26,850 0 0		8,150 0 0	- - -	- - -		989 7 4
...,000 0 0						245 3 3	
...,000 0 0						243 1 3	
...,000 0 0						250 6 11	
	75,000 0 0	- - -	- - -	- - -	- - -		738 11 5

Name of Railway.	Total Advances.	Date of Security.	Period for which the Loan was made.	Rate of Interest.
Londonderry and Coleraine:— £	£			
1st advance 14,000		6th July 1852 -	13 years; wholly repaid in 1862.	5 per cent., reduced to 4 per cent.
2nd „ 14,000		16th Nov. „ -		
3rd „ 14,000		3rd May 1853 -		
4th „ 28,000	70,000	19th July „ -		
Waterford and Limerick:—			Each of these sums was made repayable in 20 years from date of advance, but by Treasury Warrant of 22nd August 1866, the balances remaining unpaid were amalgamated, and made repayable, with interest at 3½ per cent., in 22 years from 15 May 1866.	5 per cent., reduced to 4 per cent., and subsequently to 3½ per cent.
1st „ 20,000		16th April 1851		
2nd „ 20,000		31st Oct. „		
3rd „ 20,000		15th April 1852		
4th „ 20,000		16th Aug. „ -		
5th „ 20,000		29th Dec. „ -		
6th „ 20,000	120,000	29th July 1853 -		
Limerick and Foynes:—				
1st „ 20,000		18th April 1857		
2nd „ 10,000		11th July „ -		
3rd „ 10,000	40,000	5th Dec. „ -	„ „	„ „
Limerick and Ennis:—				
1st „ 10,000		28th Nov. 1857 -		
2nd „ 10,000		6th March 1858	„ „	„ „
3rd „ 10,000	30,000	29th May „		
Killarney Junction:—				
1st advance 25,000		20th Feb. 1852 -	20 years - - -	5 per cent., reduced to 4 per cent.
2nd „ 25,000		17th Nov. „ -	„ - - -	„
3rd „ 25,000		13th April 1853	„ - - -	„
4th „ 25,000	100,000	2nd Aug. „ -	„ - - -	„
Londonderry and Enniskillen:—				
1st advance 10,000		19th Feb. 1852 -	13 years, extended to 20 years	„
2nd „ 10,000		18th May „ -	„ „ „ -	„
3rd „ 10,000		16th Nov. „ -	„ „ „ -	„
4th „ 20,000	50,000	28th Dec. „ -	„ „ „ -	„
Dublin and Wicklow:—				
1st advance 25,000		6th Dec. 1854 -	20 years - - -	„
2nd „ 25,000		1st May 1855 -	„ - - -	„
3rd „ 25,000		6th July „ -	„ - - -	„
4th „ 25,000	100,000	20th March 1856	„ - - -	„
Portadown, Dungannon, and Omagh Junction:—				
1st advance 10,000		25th June 1857	20 years - - -	„
2nd „ 10,000		15th Oct. „ -	„ - - -	„
3rd „ 5,000	25,000	28th July 1858 -	„ - - -	„
Tralee and Killarney:—				
1st advance 20,000		30th Nov. 1858 -	20 years - - -	„
2nd „ 15,000		13th April 1859	„ - - -	„
3rd „ 15,000	50,000	8th July „	„ - - -	„
Great Northern and Western (of Ireland):—				
1st loan—1st advance 30,000		15th June 1861	20 years, extended to 25 years	„
2nd „ 20,000		2nd July „ -	„ „ „ -	„
3rd „ 20,000		3rd Jan. 1862 -	„ „ „ -	„
4th „ 10,000		25th Aug. „ -	„ „ „ -	„
2nd loan - - 33,000		25th July 1863	„ „ „ -	„
3rd loan - - 21,000	134,000	27th Sept. 1865	„ „ „ -	„
Dublin, Wicklow, and Wexford:—				
1st loan—1st advance 40,000		4th Aug. 1862 -	20 years - - -	5 per cent.
2nd „ 30,000		21st April 1863	„ - - -	„
3rd „ 29,300		17th Sept. „ -	„ - - -	„
2nd loan - - 30,000	129,300	20th Sept. 1866	„ - - -	„
Finn Valley:—				
1st advance 10,000		22nd Sept. 1862	20 years - - -	„
2nd „ 10,000	20,000	5th Jan. 1863 -	„ - - -	„
Londonderry and Lough Swilly:—				
1st advance 6,500		15th Dec. 1862 -	15 years - - -	„
2nd „ 6,500	13,000	20th Oct. 1863 -	„ - - -	„
Parsonstown and Portumna Bridge:—				
1st advance 6,000		31st Jan. 1867 -	20 years - - -	„
2nd „ 6,000	12,000	30th Aug. „ -	„ - - -	„
Athenry and Ennis Junction:—				
1st advance 20,000	20,000	17th May 1867 -	20 years - - -	„
	? 447,300			

ncipal repaid.	Total repaid by each Railway.	Principal unpaid.	Total unpaid by each Railway.	Interest in Arrear.	Total Interest due by each Railway.	Costs paid to Solicitor.	Total Costs paid by each Railway.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d	£ s. d.
4,000 0 0						173 1 3	
4,000 0 0						168 17 5	
14,000 0 0						169 14 9	
28,000 0 0						171 8 9	
	70,000 0 0	- - -	- - -	- - -	- - -		683 2 2
						412 16 11	
6,953 1 9		53,046 18 3				260 9 1	
	66,953 1 9		53,046 18 3	- - -	- - -	222 4 9	
						192 2 1	
						264 9 3	
						305 18 3	1,658 0 4
						180 1 9	
4,648 7 0		25,351 13 0				151 17 11	
	14,648 7 0		25,351 13 0	- - -	- - -	151 15 7	
							483 15 3
						173 18 3	
7,563 15 10		22,436 4 2				193 15 3	
	7,563 15 10		22,436 4 2	- - -	- - -	177 16 10	
							545 10 4
7,650 0 0		7,350 0 0				283 19 1	
6,180 0 0		8,820 0 0					
6,180 0 0		8,820 0 0				196 16 1	
6,180 0 0		8,820 0 0				163 8 9	
	66,190 0 0		33,810 0 0	- - -	- - -	169 18 5	
							814 2 4
7,058 17 0		2,941 3 0					
7,058 17 0		2,941 3 0				212 15 7	
6,470 12 3		3,529 7 9				130 18 5	
2,941 4 6		7,058 15 6				142 3 11	
	33,529 10 9		16,470 9 3	- - -	- - -	131 4 3	
							617 2 2
5,290 0 0		9,710 0 0					
5,290 0 0		9,710 0 0				334 11 6	
5,290 0 0		9,710 0 0				264 7 3	
3,900 0 0		11,100 0 0				369 3 9	
	59,770 0 0		40,230 0 0	- - -	- - -	307 6 9	
							1,275 9 3
						167 15 9	
8,232 0 0		16,768 0 0				97 14 5	
	8,232 0 0		16,768 0 0	- - -	- - -	209 3 5	
							474 13 7
6,666 12 0		13,333 8 0					
5,000 2 0		9,999 18 0				196 8 5	
5,000 2 0		9,999 18 0				166 1 7	
	16,666 16 0		33,333 4 0	- - -	- - -	117 5 4	
							479 15 4
- - -	- - -	113,000 0 0				136 10 10	
			113,000 0 0	4,520 0 0	4,520 0 0	95 10 3	
						95 8 3	
						160 17 6	
- -	- - -	21,000 0 0				172 10 9	
			21,000 0 0	1,050 0 0	1,050 0 0	201 13 1	
							862 10 8
6,666 0 0		33,334 0 0				211 8 3	
3,334 0 0		26,666 0 0				152 0 11	
3,256 0 0		26,044 0 0				350 13 1	
		30,000 0 0				166 13 1	
	13,256 0 0		116,044 0 0	- - -	- - -		880 15 4
		10,000 0 0		2,000 0 0		107 7 1	
		10,000 0 0		1,500 0 0		148 19 5	
			20,000 0 0		3,500 0 0		256 6 6
		6,500 0 0		812 10 0		139 14 9	
		6,500 0 0		812 10 0		166 18 1	
			13,000 0 0		1,625 0 0		306 12 10
		6,000 0 0				80 18 5	
		6,000 0 0				99 10 0	
			12,000 0 0	- - -	- - -		180 8 5
		20,000 0 0				105 7 8	
			20,000 0 0	- - -	- - -		105 7 8
	1,317,416 19 6		1,129,883 0 6		12,030 19 10		22,121 15 9

Name of Railway.	Total Advances.	Date of Security.	Period for which the Loan was made.	Rate of Interest.
Advances under "The Railway "Companies (Ireland) Tem- "porary Advances Act:"—				
*Dublin, Wicklow, and Wexford:—	£			
1st advance 42,520	- - -	25th Oct. 1866 -	1 year - - -	5 per cent.
2nd „ 15,290	57,810	25th April 1867	„ - - -	- „
*Newry, Warrenpoint, and Rostrevor.	8,400	8th Nov. 1866 -	„ - - -	„
*Waterford and Kilkenny - -	12,776	22nd Nov. 1866	„ - - -	„
*Athenry and Tuam - - -	30,000	7th Nov. 1866 -	„ - - -	„
Dublin and Meath:				
1st advance - -	13,500	24th Jan. 1867 -	„ - - -	„
*Rathkeale and Newcastle - -	16,600	31st Dec. 1866 -	„ - - -	„
Waterford and Limerick:—				
1st loan - - 14,750	- - -	22nd June 1867	„ - - -	„
2nd „ - - 5,520	20,270	13th July 1867 -	„ - - -	„
	2,606,656	- - -	- - - - -	- - -

* Time extended to 31st July 1868 by Treasury Letter of 31st October 1867.

Public Works Loan Office,
3, Bank Buildings, E.C.
3rd January 1868.

6.—RETURN* of all ADVANCES made by the COMMISSIONERS of PUBLIC WORKS to RAILWAYS in IRELAND, for which such Loan was made, the Rate of Interest charged, the Amount of Principal now paid off of the Board of Works by the Company applying for such Loans, with Totals in the Case of each

NAME OF COMPANY.	Amount Advanced.	Total of each Railway.	Year advanced.	Period for which the Loan was made.
	£ s. d.	£ s. d.		
Dublin and Kingstown - - - -	75,000 0 0	- - -	1832	25 years - -
Do. do. - - - -	37,200 0 0	- - -	1836	20 years - -
Do. do. (Dalkey Branch) -	25,000 0 0	- - -	1842	20 years - -
		137,200 0 0	- - -	- - -
Ulster Railway - - - - -	20,000 0 0	20,000 0 0	1840	25 years - -
Waterford and Limerick - - -	†13,507 19 6	13,507 19 6	1846–7	- - -
		170,707 19 6	- - -	- - -

* Reprinted from Parliamentary Paper, 1867, No. 140.
† This sum was advanced in 1846–7 out of the Labour Rate Fund, Act 9 & 10 Vict. c. 107, on the security of the

Office of Public Works, Dublin, 5 March 1867.

7.—RETURN shewing the AMOUNT of RAILWAY DEPOSITS standing in the Name of the Accountant-General of the Court of Chancery, Ireland, on the 1st October 1867:—

	Cash.	Government New 3 per cent. Stock.
	£ s. d.	£ s. d.
Dundalk and Greenore Railway - - - -	1,600 0 0	—
Downpatrick, Dundrum, and Newcastle - - - -	386 8 4	6,549 3 6
Dublin Metropolitan Railway - - - -	1,771 4 6	13,918 13 6
Dublin Trunk Connecting (Deviation) - - - -	176 15 9	2,000 0 0 Exchequer bills.
Waterford, Dungarvan, and Lismore - - - -	2,511 5 9	34,109 8 3
Dublin, Rathmines, and Rathgar - - - -	—	15,445 9 2
Waterford and Passage Railway and Ferry - - -	590 4 2	—
Dublin, Carlingford, and Greenore - - - -	—	10,789 3 3 Consols.
Waterford and Tramore - - - - -	3,840 0 0	—

		£ s. d.
TOTAL -	Cash - - - -	10,875 18 0
	Government New 3 per cent. Stock - - -	70,022 14 5
	Government 3 per cent. Consols - - -	10,789 3 3
	Exchequer bills - - - -	2,000 0 0
		£93,687 15 8

(Signed) DIGBY P. STARKEY,
Accountant-General.

W. Neilson Hancock, Esq.,
Secretary Railways (Ireland) Commission,
2, Victoria Street, Westminster.

Principal repaid.	Total repaid by each Railway.	Principal unpaid.	Total unpaid by each Railway.	Interest in Arrear.	Total Interest due by each Railway.	Costs paid to Solicitor.	Total Costs paid by each Railway.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
- - -	- - -	42,520 0 0				52 10 0	
- - -	- - -	15,290 0 0				21 0 0	
			57,810 0 0				73 10 0
- - -	- - -	8,400 0 0				20 13 6	
			8,400 0 0				20 13 6
- - -	- - -	12,776 0 0				21 16 6	
			12,776 0 0				21 16 6
- - -	- - -	30,000 0 0				26 0 4	
			30,000 0 0				26 0 4
- - -	- - -	13,500 0 0				27 7 8	
			13,500 0 0				27 7 8
- - -	- - -	16,600 0 0				52 3 8	
			16,600 0 0				52 3 8
- - -	- - -	14,750 0 0				57 6 8	
- - -	- - -	5,520 0 0				8 3 7	
			20,270 0 0				65 10 3
- - -	1,317,416 19 6		1,289,239 0 6		12,030 19 10		22,408 17 8

(Signed) W. W. Wellink,
Secretary.

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specifying the Name of the Company, the Amount advanced and the Year in which advanced, the Period the Amount remaining due, the Amount of Interest now due, and the Cost paid in each case to the Solicitor Railway, and also Gross Totals.

Rate of Interest.	Amount of Principal paid off.		Amount remaining due.		Cost paid to Solicitor of Board of Works.
			Principal.	Interest.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
4 per cent. -	75,000 0 0				
4 per cent. -	37,200 0 0				
5 per cent. -	25,000 0 0				
- - -		137,200 0 0	- - -	- - -	193 19 4
5 per cent. -	- - -	20,000 0 0	- - -	- - -	100 0 0
3½ per cent. -	- - -	13,507 19 6	—	—	—
- - -	- - -	170,707 19 6	- - -	- - -	293 19 4

rates of the Baronies of Clanwilliam, Iffa and Offa East, and Iffa and Offa West, in the County of Tipperary.

W. B. Soady, Accountant.

RAILWAYS (IRELAND) COMMISSION.

APPENDIX, PART III., CLASS I.—LINES AUTHORIZED BUT NOT COMMENCED.

No. in Appendix and on Map.		Railways, Class I.—Lines authorized but not commenced.	Length of Line authorized.		App. Cla.
Main Lines.	Branches and Extensions.		Miles.	Miles.	Page
		1st.—*Lines not commenced.*			
1.		Bray and Enniskerry	3½		42
2.		Central Ireland (Maryborough to Mullingar)	36		43
3.		Clonmel, Lismore, and Dungarvan (main line)	38		44
	3 *a*.	Dungarvan branch of the Clonmel, Lismore, and Dungarvan			
4.		Dublin Metropolitan (in the City of Dublin)	2½		45
5.		Dublin, Rathmines, Rathgar, Roundtown, Rathfarnham, and Rathcoole (Dublin to Poulaphuca Bridge)	24		46
6.		Dundalk and Greenore (Co. Louth)	13		47
7.		Limerick and North Kerry (Newcastle to Listowel)	23		48
8.		Navan and Kingscourt	20		49
9.		Sligo and Ballaghaderreen (Kilfree Junction to Ballaghaderreen)	9½		50
10.		Waterford, Lismore, and Fermoy (Waterford to Dungarvan, and Lismore to Fermoy)	42½		51
11.		Waterford and Passage (Ballytruckle Junction to River Suir, at Passage)	9½		52
12.		Waterford and Wexford (Ballyhack to Wexford)	33¼		53
	12 *a*.	Greenore (Co. Wexford) branch of the Waterford and Wexford			
		Length of lines not commenced		254¾	
		2nd.—*Branches and Extensions not commenced belonging to lines (included in Class II.) commenced but not completed.*			
	21 *a*.	Meelick Extension of the Midland Counties, &c. Railway (Banagher to Meelick)	5¾		63
	24 *a*.	Collieries Branches of the Southern (Graystown Junction to the Collieries)	9½		66
	25 *a*.	Waterford Extension (Ballywilliam to Waterford)	19		67
	25 *b*.	Ballyhoge Branch (Ballywilliam to Ballyhoge) of Waterford, New Ross, and Wexford	14¼		67
		Length of branches and extensions connected with railways in Class II., but not commenced		48½	
		3rd.—*Branches and Extensions not commenced belonging to lines (included in Class III.) completed and carrying traffic.*			
	39 *e*.	Kingstown connecting branch of the Dublin, Wicklow, and Wexford	2		94
	44 *a*.	Sligo Extension of the Enniskillen, Bundoran, and Sligo	23		111
	50 *b*.	Ballina Extension of the Great Northern and Western	9¼		124
	50 *c*.	Westport Quay Extension of the Great Northern and Western	1¾		124
		Length of branches and extensions connected with railways in Class III., but not commenced		36	
		Total mileage authorized but not commenced		339¼	

Bray and Enniskerry.

1. THE BRAY AND ENNISKERRY RAILWAY.

LENGTH OF AUTHORIZED LINE.

	Miles.
Bray to Enniskerry	3½

CAPITAL.

Capital authorized:—

	£
Shares	36,000
Borrowing Powers	12,000
Total	£48,000

No capital has been raised, and no particulars have been ascertained of the cost of obtaining the Act.

This railway will, if made, connect Enniskerry with the Dublin, Wicklow, and Wexford line at Bray.

THE LINE.

The line was authorized in 1866. 29 & 30 Vict. c. 321.

No land has been taken; the compulsory powers for acquiring it will expire on the August 1868; and no bill has been applied for in the present session for extending time. The powers for completing the works will expire on the 6th August 1869.

RELATIONS OF THE BRAY AND ENNISKERRY WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
Dublin, Wicklow, and Wexford - -	Bray - - - - - -	94

The Dublin, Wicklow, and Wexford Railway.

The Dublin, Wicklow, and Wexford Company is empowered to subscribe 15,000*l.* to undertaking.

THE CENTRAL IRELAND RAILWAYS (promoted by the Waterford and Kilkenny and the Kilkenny Junction Railway Companies). Central Ireland Railways.

MARYBOROUGH to MULLINGAR.

LENGTH OF AUTHORIZED LINE.

MARYBOROUGH to MULLINGAR, including connecting lines at Maryborough and Geashill - - - - - - - - - } 36 miles.

CAPITAL.

Capital authorized:—

	£
Shares—	
To be found by the Waterford and Kilkenny Company -	110,000
„ „ Kilkenny Junction Company - -	110,000
Borrowing Powers—	
To be exercised by the Waterford and Kilkenny Company	36,600
„ „ Kilkenny Junction Company - -	36,600
Total - - - - - - -	£293,200

No capital has been raised. The expenses of the Act (for which the promoting companies are jointly liable) amount to 6,924*l.* 11*s.* 2*d.*

This railway, if made, will be an extension of the line of the Kilkenny Junction from Maryborough to the Athlone branch of the Great Southern and Western Railway at Geashill, and thence to the Midland Great Western Railway at Mullingar.

THE LINE.

The line was authorized in 1866, with the usual limit of three years for compulsory purchase of lands, and five years for the completion of the works. No land has yet been taken. 29 & 30 Vict. c. 257.

RELATIONS OF THE CENTRAL IRELAND RAILWAYS WITH OTHER RAILWAY COMPANIES.

The lines in connexion with the Central Ireland Railways are stated in the following table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Great Southern and Western - -	At Maryborough and at Geashill -	100
Midland Great Western - - -	Near Mullingar - - - -	118

The Great Southern and Western Railway.

The line of the Central Ireland crosses under the Great Southern and Western main line near Maryborough, and over the Athlone branch near Geashill, with connecting lines to near the stations at those towns, but without power to use any part of the Great Southern and Western Railway, or any stations thereon.

The Midland Great Western Railway.

The Waterford and Kilkenny and the Kilkenny Junction Companies, as promote and owners of the Central Ireland Railway, are authorized to make an agreement wi the Midland Great Western Company for the use of the Mullingar station, and of t line between the junction and the station.

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3. THE CLONMEL, LISMORE, AND DUNGARVAN RAILWAY.

Clonmel, Lismore, and Dungarvan Railway.

CLONMEL to LISMORE, with branch to Dungarvan.

LENGTH OF AUTHORIZED LINE.

MAIN LINE.

	Miles.
CLONMEL to LISMORE - - - - - - -	32¼

BRANCH.

(*a.*) THE DUNGARVAN BRANCH (from the Junction with the Main Line to Dungarvan) 5¾

Total length of main line and branch - - - - 3

CAPITAL.

Capital authorized:—

	£
Shares - - - - -	300,000
Borrowing Powers - - -	100,000
Total - -	£400,000

Financial position on the 30th of June as ascertained by the Commission:

Capital raised:—

Ordinary Shares - - - - -	£5,579
Floating liabilities - - - -	£5,959

This railway would, if made, connect the towns of Lismore and Dungarvan and portion of the county of Waterford, with the Waterford and Limerick line at Clonmel

THE LINE.

28 & 29 Vict. c. 264.

The line was authorized in 1865. No land has been taken; the power of taking will expire on the 5th of July 1868; and no bill has been applied for in the presen session for extending the time.

RELATIONS OF THE CLONMEL, LISMORE, AND DUNGARVAN WITH OTHER RAILWAY COMPANIES.

The lines in connexion with the Clonmel, Lismore, and Dungarvan Railway are state in the following table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Line.		
The Waterford and Limerick - - -	Clonmel - - -	140
Line authorized but not commenced.		
The Waterford, Lismore, and Fermoy - -	Lismore and Dungarvan -	51

The Waterford, Lismore, and Fermoy Railway.

Power is conditionally reserved by the Act of incorporation to the Waterford Lismore, and Fermoy Company to continue the line between Dungarvan and Lismor if the Clonmel, Lismore, and Dungarvan Company shall not before 5th July 1868 hav made that portion of the line.

The Waterford and Limerick Railway.

By the same Act the Waterford and Limerick Company is authorized to mak working agreements with the Clonmel, Lismore, and Dungarvan Company.

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4. THE DUBLIN METROPOLITAN JUNCTION RAILWAY.

Dublin Metropolitan Junction Railway.

onnecting the GREAT SOUTHERN AND WESTERN, the DUBLIN AND RATHMINES, &c. and the DUBLIN, WICKLOW, AND WEXFORD LINES.

LENGTH OF AUTHORIZED LINE.

JUNCTION with GREAT SOUTHERN AND WESTERN RAILWAY to JUNCTION with the DUBLIN AND RATHMINES, &c. RAILWAY (including a short connecting line between the Dublin and Rathmines, &c. and the Dublin, Wicklow, and Wexford lines) - - - -	2½ miles.

CAPITAL.

apital authorized :—	£
Shares - - - - -	160,000
Borrowing Powers - - -	53,000
Total - - -	£213,000

o capital has been raised by the Company.

THE LINE.

ne line was authorized in 1865. No land has been taken ; the power of taking it expire on the 6th of July 1868, and no bill has been applied for in the present on for extending the time for compulsory purchase. 28 & 29 Vict. c. 382.

ELATIONS OF THE DUBLIN METROPOLITAN JUNCTION WITH OTHER RAILWAY COMPANIES.

ne lines in connexion with the Dublin Metropolitan Junction are stated in the wing table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Lines.		
Great Southern and Western - -	Near Island Bridge Barracks -	100
Dublin, Wicklow, and Wexford - -	In the Harcourt Street Terminus	94
Line authorized but not commenced.		
Dublin and Rathmines, &c. - -	Camden Row - - -	46

he Dublin Metropolitan Junction Railway would, if made, connect the Dublin, klow, and Wexford line (including the Kingstown Connecting branch), with the Great hern and Western, and with the proposed central station of the Dublin and Rath-s, &c. Railway, and it will also connect the Dublin, Wicklow, and Wexford with the at Southern and Western Railway.

Dublin, Rathmines, &c. Railway.

5. THE DUBLIN, RATHMINES, RATHGAR, ROUNDTOWN, RAT FARNHAM, AND RATHCOOLE RAILWAY.

From Dublin to Poulaphuca Bridge.

LENGTH OF AUTHORIZED LINE.

	Miles.
Dublin to Poulaphuca Bridge - - -	24

CAPITAL.

Capital authorized :—	£
Shares - - - - - -	450,000
Borrowing Powers - - - -	149,000
Total - - -	£599,000

Financial position, on the 30th of June 1867, as ascertained by the Commission :-

Capital raised by the Company :—	£
Ordinary Shares - - - -	7,136
Floating Liabilities, less Floating Assets - - -	9,860

This railway would, if made, connect the towns of Blessington, Rathcoole, Ra farnham, and the suburbs of Rathmines, Rathgar, and Roundtown, with a central stat in Dublin.

THE LINE.

27 & 28 Vict. c. 281. 28 & 29 Vict. c. 265.

The line as far as Tallaght was authorized in 1864, and the extension to Blessing and Poulaphuca Bridge in 1865.

There is not the usual limit of time for the power of taking land as far as Tallag but the power of completing the works terminates on 29th July 1869.

Power for taking land for the extension to Poulaphuca Bridge will expire on 5 July 1868. 400*l.* only has been expended for land and compensation, and no applicati has been made for extension of time for purchase.

Relations of the Dublin, Rathmines, Rathgar, Roundtown, Rathfarnham, and Rathcoole with other Railway Companies.

The lines in connexion with this railway are stated in the following table :—

Name of Railway Company.	Point of Junction.	Page of Repor
Completed Line.		
The Dublin, Wicklow, and Wexford - -	Near the Terminus in Dublin - -	94
Line authorized but not commenced.		
The Dublin Metropolitan Junction Railway -	Two junctions near Camden Row -	45

The Dublin, Wicklow, and Wexford Railway.

The Dublin, Rathmines, &c. Railway would, if made, connect the Dublin, Wicklo and Wexford Railway with the proposed central station in Dublin.

The Dublin Metropolitan Junction Railway.

This line would, if made, connect the Great Southern and Western Railway with th central station of the Dublin, Rathmines, &c. Railway, and would give a shorter co nexion between the Dublin, Wicklow, and Wexford line and the proposed central statio than the authorized connecting line of the Dublin, Rathmines, &c. Railway.

6. THE DUNDALK AND GREENORE RAILWAY.

Dundalk and Greenore Railway.

LENGTH OF AUTHORIZED LINE.

	Miles.
Dundalk to Greenore Harbour (Co. Louth) - -	13

CAPITAL.

apital authorized :—

	£
Shares - - - - -	160,000
Borrowing Powers - - - -	53,200
Total - - - -	£213,200

nancial position, on the 30th of August 1867, as ascertained by the Commission :—

apital raised by the Company :—

	£
Ordinary Shares - - - -	5,345
Total Capital - - -	£5,345

oating Liabilities, less Floating Assets - - £10,187

ll the land has been taken, but the works are not commenced.
his railway would, if made, connect the Irish North Western line with the proposed our at Greenore.

THE LINE.

he line was authorized in 1863, and the two connecting lines at Dundalk in 1867; at year the time for completing the works was extended to the 12th of August 1870. 26 & 27 Vict. c. 233. 30 & 31 Vict. c. 183.

Relations of the Dundalk and Greenore with other Railway Companies.

ne lines in connexion with the Dundalk and Greenore are stated in the following :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Line.		
rish North Western - - - -	At the Goods Station and at the Quay Extension at Dundalk.	108
Line commenced but not completed.		
Newry and Greenore - - - -	Near Greenore - - -	64

The Irish North Western Railway.

y the Act of 1867 the Irish North Western Company sold land to the Dundalk and enore Company for an extension to the Quay of Dundalk. The Companies have amentary power to enter into agreements for working and maintaining the line.

The Newry and Greenore Railway

he Act of 1863 provides that the pier and works at Greenore, and the line between enore Harbour and the junction between the Dundalk and Greenore and Newry and enore lines, shall be made by the Newry and Greenore Company, and become

the joint property of both Companies; but owing to some default on the part of Newry and Greenore Company, the Dundalk and Greenore Company has been au rized to execute the joint works at Greenore.

The London and North Western Railway.

This Company is authorized to subscribe 130,000*l.* to the Dundalk and Gree Railway, and to enter into arrangements for working and maintaining the line. Company has advanced 7,590*l.* towards the undertaking.

The Ulster Railway.

Certain facilities for traffic between Belfast and English ports are secured by the of 1867 to the Ulster Company in case the London and North Western and Irish N Western Companies enter into traffic arrangements with the Dundalk and Greenore

The Midland Great Western Railway.

Equal facilities for traffic in the like event, are secured by the Act of 1867 to Midland Great Western of Ireland Railway.

Limerick and North Kerry Junction Railway.

7. THE LIMERICK AND NORTH KERRY JUNCTION RAILWAY

NEWCASTLE (County of Limerick) to LISTOWEL.

LENGTH OF AUTHORIZED LINE.

	Miles.
NEWCASTLE (County of Limerick) to LISTOWEL - - -	23

CAPITAL.

Capital authorized:—	£
Shares - - - - -	130,000
Borrowing Powers - - - - -	43,300
Total - - -	£173,300

No capital has been raised, but the expenses already incurred amount to about 5,00 which has been paid by the promoters.

This railway would, if made, give the town of Listowel and the north part of t county of Kerry railway communication with Limerick.

THE LINE.

28 & 29 Vict. c. 369.

The line was authorized in 1865; the time to take the land will expire on t 5th July 1868, but a bill is being promoted in the present session of Parliament extend the time for four years. No land has been taken.

RELATIONS OF THE LIMERICK AND NORTH KERRY WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
The Rathkeale and Newcastle - -	Newcastle - - - -	148

The Rathkeale and Newcastle Railway.

The Limerick and North Kerry Railway is an extension of the Rathkeale a Newcastle Railway.

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8. THE NAVAN AND KINGSCOURT RAILWAY.

LENGTH OF AUTHORIZED LINE.

	Miles.
Navan to Kingscourt - - - - -	20

CAPITAL.

Capital authorized :—	£
Shares - - - - -	120,000
Borrowing Powers - - - - -	40,000
Total - - - -	£160,000

Financial position, on the 30th of June 1867, as ascertained by the Commission :—
No capital has been raised.
12,000*l.* has been spent for Parliamentary and engineering expenses. No information has been furnished to the Commission as to how this sum or any portion of it has been raised.

This railway is an extension of the Dublin and Meath Railway to the town of ngscourt.

THE LINE.

The line was authorized in 1865, but in 1867 the time for completing it was extended the 15th July 1871. No land has been taken.

28 & 29 Vict. c. 350.
30 & 31 Vict. c. 146.

Relations of the Navan and Kingscourt with other Railway Companies.

Name of Railway Company.	Point of Junction.	Page of Report.
Dublin and Meath - - - -	Navan - - - - -	92
Dublin and Drogheda - - -	Navan - - - - -	89

The Dublin and Meath Railway.

The Dublin and Meath Company is empowered to enter into working agreements h the Navan and Kingscourt Company, and to subscribe 40,000*l.*; but no money yet been subscribed.

The Dublin and Drogheda Railway.

One of the deviations authorized in 1867 will connect the Navan and Kingscourt line h the Oldcastle branch of the Dublin and Drogheda line at Navan.

Sligo and Ballaghaderreen Junction Railway.

9. THE SLIGO AND BALLAGHADERREEN JUNCTION RAILWAY.

From Junction with the Sligo Branch of the Midland Great Western Railway t Ballaghaderreen.

LENGTH OF AUTHORIZED LINE.

	Miles.
Kilfree Junction to Ballaghaderreen - - -	9½

CAPITAL.

Capital authorized:—	£
Shares - - - - -	50,000
Borrowing Powers - - - -	16,600
Total - - -	£66,600

Financial position, on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—	£
Ordinary Shares - - - - -	978
Total Capital - - -	£978
Cr. Floating Assets - - - - -	£94

This railway would, if made, connect the town of Ballaghaderreen, in the county Mayo, with the Sligo branch of the Midland Great Western Railway.

THE LINE.

26 & 27 Vict. c. 169. 29 & 30 Vict. c. 360.

The line was authorized in 1863; the time for exercising powers for the purchase lands has been extended to the 10th of August 1868, and for completing the works August 1869.

No land has been taken or any works contracted for, but the proprietor throug whose estate the greater part of the line is to pass has applied to the Commissioners Public Works to sanction a loan for 10,000*l.* as a Railway Estate Improvemen under Stat. 27 & 28 Vict. c. 114.

Relations of the Sligo and Ballaghaderreen Junction with other Railway Companies.

Name of Railway Company.	Point of Junction.	Page of Report.
The Midland Great Western - -	Kilfree Junction - - - - -	118

The Midland Great Western Railway.

Power is given for making working agreements with the Midland Great Weste Company.

10. THE WATERFORD, LISMORE, AND FERMOY RAILWAY.

Waterford, Lismore, and Fermoy Railway.

ATERFORD to DUNGARVAN, and LISMORE to FERMOY (with right of using or making under certain contingencies the line of the Clonmel, Lismore, and Dungarvan Railway between Dungarvan and Lismore).

LENGTH OF AUTHORIZED LINE.

	Miles.
WATERFORD to DUNGARVAN - - - - - -	27¾
LISMORE to FERMOY - - - - - -	14¾
Total length authorized - - -	42½

CAPITAL.

Capital authorized :—	£
Shares - - - - - -	400,000
Borrowing Powers - - - -	133,000
Total - - -	£533,000

No capital has been raised, and the expenses incurred in obtaining the Act of rliament have not been ascertained.

This railway, if completed, will connect the towns of Dungarvan, Lismore, and Fermoy h Waterford.

THE LINE.

The line was authorized in 1865. The time for taking land will expire on the 5th of y 1868, and the time for completing the works on the 5th of July 1870. No land been taken; the works are not commenced, and no bill has been applied for in the sent session for extension of time. 28 & 29 Vict. c. 351.

ELATIONS OF THE WATERFORD, LISMORE, AND FERMOY WITH OTHER RAILWAY COMPANIES.

The lines in connexion with the Waterford, Lismore, and Fermoy are stated in the owing table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Line.		
Great Southern and Western - -	Fermoy - - -	100
Line authorized but not commenced.		
Clonmel, Lismore, and Dungarvan -	Dungarvan and Lismore -	44

The Great Southern and Western Railway.

The Waterford, Lismore, and Fermoy Railway joins the Fermoy branch of the Great uthern and Western Company, and power is given to the Companies to make traffic angements.

The Clonmel, Lismore, and Dungarvan Railway.

Power to use part of the line between Dungarvan and Lismore is reserved to the aterford, Lismore, and Fermoy Company; also a contingent power of constructing part of the railway, if not made before 5th July 1868 by the Clonmel, Lismore, and ngarvan Company, and if the Waterford, Lismore, and Fermoy Company shall have n made the line from Waterford to Dungarvan.

Waterford and Passage Railway.

11. THE WATERFORD AND PASSAGE RAILWAY.

(From Junction at Ballytruckle with Waterford and Tramore Railway to the shore the River Suir near Passage.)

LENGTH OF AUTHORIZED LINE.

	Miles.
Ballytruckle Junction to River Suir at Passage - - - - -	9½

CAPITAL.

Capital authorized:—	£
Shares - - - - - -	80,000
Borrowing Powers - - - -	26,600
Total - - - - -	£106,600

Financial position, on the 30th of June 1867, as ascertained by the Commission:—
No capital has been raised.

All expenses up to this time have been borne by the promoters.

THE LINE.

25 & 26 Vict. c. 217
26 & 27 Vict. c. 224.

The line from Ballytruckle, near Waterford, to Passage, was authorized in 1862, and the short extension from Passage to the south-west shore of the estuary of the River Suir in 1863. By the Act of 1863 the Company was authorized to make a pier on the shore of the River Suir at the end of the railway and also a pier on the opposite side of the estuary at Ballyhack, in the county of Wexford. The Company was authorized to acquire the property and rights of the Passage and Ballyhack ferry and to work it by steamboats.

14 & 15 Vict. c. 70.

The valuator's final award under the Railways, Ireland, Act, 1851, as to the land, has been delivered, but no land has been taken.

28 & 29 Vict. c. 381.
30 & 31 Vict. c. 161.

In 1865 the Company obtained an extension of two years to complete the works, and in 1867 a further extension to the 25th July 1869.

Relations of the Waterford and Passage Railway with other Railway Companies.

Name of Railway Company.	Point of Junction.	Page of Report
Completed Line.		
The Waterford and Tramore - -	Ballytruckle, near Waterford - -	150
The Waterford and Wexford - -	Pier at Wexford side of Ballyhack Ferry -	53

The Waterford and Tramore Railway.

The Waterford and Passage Railway will join the Waterford and Tramore line at Ballytruckle, about half a mile from Waterford, and the Company has power to lay down an additional line of rails into the Waterford station, and to use it on terms to be settled by arbitration in case of difference.

The Waterford and Wexford Railway.

This railway would, if made, connect the pier at Ballyhack with the proposed harbour at Greenore (Co. Wexford), and with the Wexford Extension of the Dublin, Wicklow, and Wexford line at Wexford.

12. THE WATERFORD AND WEXFORD RAILWAY.

Waterford and Wexford Railway.

From Ballyhack to Wexford, with Branch to Greenore Bay (Co. Wexford).

LENGTH OF AUTHORIZED LINE.

MAIN LINE.

	Miles.
Ballyhack to Wexford - - - - -	26¾

BRANCH.

(*a.*) The Greenore (Co. Wexford) Branch - From Junction to Greenore (Co. Wexford). -	6½
Total number of miles authorized -	33¼

CAPITAL.

Capital authorized:—	£
Shares - - - - - -	330,000
Borrowing Powers - - - - -	110,000
Total - - - -	£440,000

No capital has been raised.

As the promoters of the Act of 1864 failed to raise the capital, some influential proprietors of land in Wexford promoted the Act of 1867 for the extension of time, but no step has been taken or capital raised by them.

This line will connect Wexford with the steam ferry across the Suir to the authorized Waterford and Passage line, proposed to be established by that Company.

THE LINE.

The line was authorized in 1864, and the time for purchase of land was extended in 1867 to the 15th of July 1869. 27 & 28 Vict. c. 216. 30 & 31 Vict. c. 140.

Relations of the Waterford and Wexford with other Railway Companies.

The lines in connexion with the Waterford and Wexford are stated in the following table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Extension commenced but not completed.		
Wexford Extension of the Dublin, Wicklow, and Wexford.	Wexford - - - - - -	94
Line authorized but not commenced.		
Waterford and Passage - - -	Pier at the Wexford side of the Ballyhack Ferry.	52

The Dublin, Wicklow, and Wexford Railway.

The Wexford Extension of this line will meet the commenced extension of the Dublin, Wicklow, and Wexford Railway at Wexford, and so connect it with Dublin.

The Waterford and Passage Railway.

This Railway, when made, will establish railway communication from the Waterford side of the Ballyhack Ferry to Waterford.

RAILWAYS (IRELAND) COMMISSION.

APPENDIX, PART III., CLASS II.—LINES COMMENCED BUT NOT COMPLETED.

No. in Appendix and on Map. Main Lines.	Branches and Extensions.		Length of Line authorized and in part commenced. Miles.	Total Miles.	Pa
		A.—Lines commenced but not completed.			
13		Athenry and Ennis	35¾		
14		Banbridge Extension (Banbridge to Ballyroney)	9¾		
15		Belfast Central (in the town of Belfast)	3		
16		Downpatrick, Dundrum, and Newcastle (County Down) (Downpatrick to Newcastle)	11		
17		Dublin and Antrim Junction (Knockmore Junction to Antrim)	18½		
18		Dublin Trunk Connecting (in the city of Dublin)	7¼		
19		Kilrush and Kilkee	8½		
20		Letterkenny (Letterkenny to Farland)	16½		
21		Midland Counties and Shannon Junction (from Clara to Banagher)	17¾		
	21(*a*)	Meelick Extension of the Midland Counties Railway (Banagher to Meelick)	*Vide* Cl. I.		
22		Newry and Greenore (Co. Louth)	14		
23		Parsonstown and Portumna Bridge	12½		
24		Southern (Thurles Junction to Clonmel)	24		
	24(*a*)	Collieries Branches of the Southern (Graystown Junction to the Collieries	*Vide* Cl. I.		
25		Waterford, New Ross, and Wexford (Bagenalstown to Ballywilliam)	20¾		
	25(*a*)	Waterford Extension (Ballywilliam to Waterford) of Waterford, New Ross, and Wexford	*Vide* Cl. I.		
	25(*b*)	Ballyhoge Branch (Ballywilliam to Ballyhoge) of Waterford, New Ross, and Wexford			
		Mileage of lines commenced but not completed		199¼	
		B.—Extensions and Branches commenced but not completed belonging to Lines completed and carrying traffic. (Class III.)			
	39(*d*)	Wexford Extension of the Dublin, Wicklow, and Wexford	15		
	50(*a*)	Foxford Branch of the Great Northern and Western	11½		
	57(*a*)	Maryborough Extension of the Kilkenny Junction (from Abbeyleix to Maryborough), since completed	9½		
	59(*a*)	Shannon Extension of the Limerick and Castleconnell	¾		
	64(*a*)	Skibbereen Extension of the West Cork	16		
		Mileage of Extensions and Branches commenced but not completed		52¾	
		Total mileage commenced but not completed		252	

The lines included in this class may be subdivided as follows:—

1st. Those railways where after some expenditure has been made the works are at standstill.

2nd. Those railways which may be expected to be completed by the companies t which they belong.

3rd. One railway which having been closed for three years would require to be pu in order before being re-opened.

4th. The Maryborough Extension of the Kilkenny Junction, which was incomplete a the period named in the Treasury Minute, but has been since opened for traffic.

5th. Those railways where only a small amount of work compared with the entir undertaking has been executed.

Under the first division may be classed—

(14.) The Banbridge Extension.
(17.) The Dublin and Antrim Junction.
(19.) The Kilrush and Kilkee.
(20.) The Letterkenny.
(21.) The Midland Counties and Shannon Junction.
(24.) The Southern.

ıder the second division may be classed—
(13.) The Athenry and Ennis.
(15.) The Belfast Central.
(16.) The Downpatrick, Dundrum, and Newcastle.
(23.) The Parsonstown and Portumna Bridge.
(50*a*.) The Foxford Branch of the Great Northern and Western.
(59*a*.) The Shannon Extension of the Limerick and Castleconnell.
ıe third division consists of (25) the Bagenalstown and Ballywilliam part of the rford, New Ross, and Wexford Railway, which has been closed for the three years, would require to be put in order before it could be safely used.
ıe fourth division consists of (57*a*) the Maryborough Extension of the Kilkenny tion.
ıder the fifth division may be classed—
(18.) The Dublin Trunk Connecting.
(22.) The Newry and Greenore.
(39*d*.) The Wexford Extension of the Dublin, Wicklow, and Wexford.

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13. THE ATHENRY AND ENNIS JUNCTION RAILWAY.

Athenry and Ennis Junction Railway.

LENGTH OF AUTHORIZED LINE.

ENNIS to ATHENRY - - $35\frac{3}{4}$ miles.

CAPITAL.

apital authorized:—	£
Shares - - - - - -	230,000
Borrowing Powers - - - -	76,600
Total - - - -	£306,600

nancial Position on the 30th of June 1867, as ascertained by the Commission:—

apital raised by the Company:—	£
Ordinary Shares - - - -	54,990
Preference Shares - - -	65,790
Debentures - - - -	16,600
Total Capital - - -	£137,380
oating Liabilities, less Floating Assets - - -	£18,597

his railway will connect part of the counties of Galway and Clare with the Midland rt Western line at Athenry, and also with the Limerick and Ennis Railway at Ennis.

THE LINE.

he line was authorized in 1860. The time for completing the works was extended 23 & 24 Vict. c. 200.
863, and again in 1867, and will terminate on the 20th of August 1869.
he works are in a forward state, and about 11 miles of permanent way are laid. 26 & 27 Vict. c. 133.
he original contractor failed, but the works have been re-let to two sub-engineers, under the engineer-in-chief, execute the work on payment for the portions com-d by them, without responsibility to complete the whole work. The land for the e line has been taken and paid for or included in floating liabilities.

RELATIONS OF THE ATHENRY AND ENNIS WITH OTHER RAILWAY COMPANIES.

he lines in connexion with the Athenry and Ennis Junction are stated in the following :—

Name of Railway Company.	Point of Junction.	Page of Report.
Midland Great Western - - -	Near Athenry - - -	118
Limerick and Ennis - - -	Near Ennis - - - -	145

The Midland Great Western Railway.

he Athenry and Ennis Company and any Company using that line have, under the 30 Vict. c. 74.
of 1867, the right to use the Athenry station of the Midland Great Western pany, and the portion of line between the junction and the station.

The Limerick and Ennis Railway.

The Athenry and Ennis Company and any Company using that line have the po to use the Ennis station of the Limerick and Ennis Company, and the portion of between the junction and the station.

The Waterford and Limerick Railway.

The Waterford and Limerick Company has subscribed 4,000*l.* to the Athenry : Ennis Railway, under an agreement of 27th May 1863, sanctioned by the Act of that ye and has undertaken to work and maintain the Athenry and Ennis line until the 2: of April 1881, or (at the option of the Waterford and Limerick Company), until years after the opening of the entire line, at the following rates, per train mile:—2*s.* for one train; 2*s.* for two trains; 1*s.* 10*d.* for three trains, and 1*s.* 9*d.* for more than th trains daily.

Banbridge Extension Railway.

14. THE BANBRIDGE EXTENSION RAILWAY.

BANBRIDGE to BALLYRONEY.

LENGTH OF AUTHORIZED LINE.

	Miles.
Banbridge to Ballyroney	9¾

CAPITAL.

Capital authorized :—	£
Shares	90,000
Borrowing Powers	30,000
Total	120,000

Financial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :—	£
Ordinary Shares	51,114
Total Capital	£51,114

Floating Liabilities, less Floating Assets - £23,382

The Company's affairs are in the Bankruptcy Court.

24 & 25 Vict. c. 89.

This line, if completed, would afford railway communication to a portion of County Down, and connect it with the railways now working to Banbridge.

THE LINE.

The line was authorized in 1861, and considerable progress was made on the first n miles until the year 1865, when the Company was made bankrupt under the I Bankruptcy and Insolvent Act, 1857. The statutable powers of completing the wo expired in June 1866, but the land has all been taken and paid for, except £7,198, wh is included in present floating liabilities.

The powers of making a branch to Rathfryland were allowed to expire without land being taken.

RELATIONS OF THE BANBRIDGE EXTENSION WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
The Banbridge, Lisburn, and Belfast	Banbridge	132

The Banbridge, Lisburn, and Belfast Railway.

The Banbridge Extension Railway continues this line into a part of the county Down.

The Ulster Railway.

The Ulster Company was authorized to make working arrangements with the bridge Extension Company, and has subscribed 9,000*l.* to the line.

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15. THE BELFAST CENTRAL RAILWAY.

Belfast Central Railway.

For connecting the Ulster, the Belfast and County Down, the Belfast, Holywood, Bangor, and the Belfast and Northern Counties Railways, with a Central station in Belfast.

LENGTH OF AUTHORIZED LINE.

From the Ulster, the Belfast and County Down, the Belfast, Holywood, and Bangor, and the Belfast and Northern Counties Railways, to the Central Station, including all the connecting lines - - -	3 miles.

CAPITAL.

Capital authorized :—

	£
Shares - - - - - -	300,000
Borrowing Powers - - - -	100,000
Total - - - - -	£400,000

Financial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :—

	£
Ordinary Shares - - - - -	65,930
Floating Liabilities, less Floating Assets - - -	187,354

THE LINE.

The principal part of this railway was authorized in 1864, and the connecting line with the Belfast and County Down Railway in 1865. The time for completing the part authorized in 1865 will expire on the 25th of July 1868, and for that authorized in 1864, on the 25th of July 1869. 27 & 28 Vict. c. 254. 28 & 29 Vict. c. 220.

The Company is promoting a bill in the present session, for placing the Central Station in the Pork Market, for abandoning the proposed railway under Corporation Street, and for modifying the plan for connecting the central station with the different railways. The works have been commenced between the river and the Belfast and County Down Railway, and in the direction of the Ulster Railway.

Relations between the Belfast Central Railway and other Railway Companies.

The lines in connexion with the Belfast Central Railway are stated in the following table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Ulster - - - -	Near the Ulster Terminus and Ulster Goods Station.	130
Belfast and County Down - -	At junction between Belfast and County Down, and Belfast, Holywood, and Bangor Railway.	70
Belfast, Holywood, and Bangor -		72
Belfast and Northern Counties - -	Near the York Street Terminus	74

Running powers are granted to the above Companies over the railway to the new station, and the Belfast Central Company has running powers to the terminus and goods station in Belfast of each of them.

Relations of the Belfast Central Railway with the Belfast Harbour Commissioners.

By the Act of 1865, the Belfast Harbour Commissioners are authorized to make a railway in connexion with the Belfast Central Railway, and the Company is authorized to enter into contracts with the Commissioners for the maintenance and use of any railway constructed by them which may communicate with any railway or tramway of the Company.

Downpatrick, Dundrum, and Newcastle (Co. Down) Railway.

16. THE DOWNPATRICK, DUNDRUM, AND NEWCASTLE (Co. DOWN) RAILWAY.

LENGTH OF AUTHORIZED LINE.

	Miles.
Downpatrick to Newcastle (Co. Down) - - -	11

CAPITAL.

Capital authorized :—	£
Shares - - - - -	75,000
Borrowing Powers - - - -	25,000
Total - - -	£100,000

Financial position on the 30th of June 1867, as ascertained by the Commission.

Capital raised by the Company :—	£
Ordinary Shares - - - -	2,016
Total capital - - -	£2,016

Cr. Floating Assets, less Floating Liabilities - - - £764

This railway connects Newcastle with Downpatrick and Belfast.

THE LINE.

29 & 30 Vict. c. 362.

The line was authorized in 1866. A portion of the land has been acquired and th works are in progress. As no land was taken or paid for on the 30th of June 1867, n purchase money is included in the floating liabilities at that date.

Relations of the Downpatrick, Dundrum, and Newcastle with other Railwa Companies.

Name of Railway Company.	Point of Junction.	Page of Report.
The Belfast and County Down - - -	Downpatrick - - - -	70

The Belfast and County Down Railway.

The Downpatrick, Dundrum, and Newcastle Railway will form a junction with th Belfast and County Down line at Downpatrick. A bill has been applied for in th present session to enable the Company to use the Downpatrick station of the Belfas and County Down Railway, to make traffic arrangements, to authorize a subscription t the line by the Belfast and County Down Company, and to reduce the capital to 80,000

17. THE DUBLIN AND ANTRIM JUNCTION RAILWAY.

From KNOCKMORE JUNCTION near Lisburn to ANTRIM.

LENGTH OF AUTHORIZED LINE.

	Miles.
KNOCKMORE JUNCTION to ANTRIM - - -	18½

CAPITAL.

Capital authorized:—	£
Shares - - - -	120,000
Borrowing Powers - - - -	40,000
Total - -	£160,000

Financial position on 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—	£
Ordinary Shares - - - -	59,362
Cr. Floating Assets, less Floating Liabilities - -	635

This railway, when completed, will make a shorter route than the present one tween Dublin and that portion of the Northern Counties line that lies to the north of ntrim.

THE LINE.

The line was authorized in 1861, and in 1866 the time for completing the works s extended to the 11th of July 1869. The land has all been taken and paid for from nockmore to within a mile of Antrim. The cost of land for that mile is not included the floating liabilities. 24 & 25 Vict. c. 122. 29 & 30 Vict. c. 129.

RELATIONS OF THE DUBLIN AND ANTRIM JUNCTION WITH OTHER RAILWAY COMPANIES.

The lines in connexion with the Dublin and Antrim Junction are stated in the following ble:—

Name of Railway Company.	Points of Junction.	Page of Report.
The Ulster - - - -	Lisburn - - -	130
The Belfast and Northern Counties - -	Antrim - - -	74

The Ulster Railway.

By the Act of 1861 the Ulster Company was authorized to subscribe 10,000*l.* to the ublin and Antrim Company, but it has not exercised that power.

The Dublin and Antrim Junction Company is empowered to lease its undertaking for years, to either the Ulster or the Belfast and Northern Counties Company, or to both ntly.

The Belfast and Northern Counties Railway.

This Company is also authorized to subscribe 10,000*l.* to the Dublin and Antrim ompany, but the power has not been exercised. The Belfast and Northern Counties ompany is protected against undue competition for traffic between Antrim and Belfast the Dublin and Antrim Company being restricted from charging lower tolls and rates om Antrim than are in force on the Belfast and Northern Counties line.

Dublin Trunk Connecting Railway.

18. THE DUBLIN TRUNK CONNECTING RAILWAY.

In the City and Suburbs of Dublin, connecting the Dublin and Kingstown, Dublin and Drogheda, Midland Great Western, and Great Southern and Western Railways.

LENGTH OF AUTHORIZED LINE.

	Miles.
Junction with Kingstown Line to the Junction with the Great Southern and Western Line (including connecting lines with the Dublin and Drogheda, and with the Midland Great Western) - - - -	7¼

CAPITAL.

Capital authorized:—	£
Shares - - - - - -	279,000
Borrowing Powers - - - -	93,000
Total - - - - -	£372,000

Financial position on the 30th of June 1867, as ascertained by the Commission.

Capital raised by the Company:—	£
Ordinary Shares* - - - - -	76,964
Total Capital - - - -	£76,964
Floating Liabilities, less Floating Assets - - -	£15,395

From the small amount of works executed the line may be considered as almost in the position of a line authorized but not commenced.

This railway is intended to connect four out of the five railways which have a terminus in Dublin.

27 & 28 Vict. c. 321.
28 & 29 Vict. c. 221.
30 & 31 Vict. c. 205.

THE LINE.

The line was authorized in 1864, and a connecting line and some deviations sanctioned in 1865; in 1867 the time for completing the works was extended to the 15th of August 1870.

A very small portion only of the works has been executed, viz., a shaft sunk at each side of the Liffey for the proposed tunnel under that river. An application has been made to the Board of Trade for leave to abandon the undertaking.

Relations of the Dublin Trunk connecting with other Railway Companies.

The lines in connexion with the Dublin Trunk Connecting Railway are stated in the following table:—

Name of Railway Company.	Point of Junction.	Page of Report.
The Dublin and Kingstown (worked by the Dublin, Wicklow, and Wexford Company).	A short distance from the Westland Row terminus.	98
The Dublin and Drogheda - - - - -	Two points at a short distance from the Amiens Street terminus.	89
The Midland Great Western - - - - -	Two points at a short distance from the Broadstone terminus, and one with the Liffey Branch, near the junction.	118
The Great Southern and Western - - -	A short distance from the Kings Bridge terminus.	100

The Dublin Trunk Connecting Railway would, if made, give a through route from Kingstown to the railways in the north, west, and south of Ireland, and connect all the railways mentioned in the table with one another.

* This does not include the amount recovered by judgment creditors, of which no particulars have been received.

THE KILRUSH AND KILKEE RAILWAY AND POULNASHERRY RECLAMATION.

Kilrush and Kilkee Railway and Poulnasherry Reclamation.

LENGTH OF AUTHORIZED LINE.

	Miles.
KILRUSH to KILKEE - - - -	8½

CAPITAL.

Capital authorized :—	£
Shares - - - - -	60,000
Borrowing Powers - - -	20,000
Total - - -	£80,000

ancial position on the 30th of June 1867, as ascertained by the Commission.
capital has been raised.

ting Liabilities, less Floating Assets - - £23,436

ney has been advanced by the promoters, but no books of accounts have been
nd Lloyd's bonds to the amount of 23,435*l.* were issued to the contractor, which
w overdue, and in the hands of a Financial Company.

s railway will connect Kilkee, a sea-bathing place on the Atlantic, with Kilrush
r on the Shannon, from which steamers ply to Foynes on the Limerick and Foynes
y. The reclamation part of the project is the enclosure of 950 acres of slob land
lnasherry Bay by an embankment, on which the railway would be carried.

THE LINE.

line was authorized under an Act of 1860, with certain deviations sanctioned in the time for completing the works was extended in 1865 for two years, which d on the 19th June 1867, and no bill is being promoted in the present session for ing the time. The embankment was at one time nearly completed, but has been damaged by the action of the tide.

23 & 24 Vict. c. 155.
24 Vict. c. 29.
28 Vict. c. 130.

Letterkenny Railway.

20. THE LETTERKENNY RAILWAY.

LETTERKENNY to FARLAND.

LENGTH OF AUTHORIZED LINE.

	Miles.
LETTERKENNY to FARLAND - - - - -	16½

CAPITAL.

Capital authorized:—	£
Shares - - - - - -	150,000
Borrowing Powers - - - -	49,800
Total - - - -	£199,800

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company—	£
Ordinary Shares - - - - -	55,869
Floating Liabilities, less Floating Assets - - - -	26,355

This railway, if completed, would connect Letterkenny and the north part of Don with Londonderry.

THE LINE.

23 & 24 Vict. c. 99. 26 & 27 Vict. c. 116. 29 Vict. c. 60.

The line as far as Pluck was authorized in 1860, and to Burt Junction in 1863. 1866 the time for completing the works was extended to the 11th June 1869. All land has been taken, and if not paid for added to capital expenditure, with the excep of 3,000*l.* which is included as a present liability.

RELATIONS OF THE LETTERKENNY WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
The Londonderry and Lough Swilly - -	Near Farland Station - -	116

The Londonderry and Lough Swilly Railway.

27 & 28 Vict. c. [illegible]

The original line authorized in 1860 was intended to form a junction with the Lond derry and Enniskillen line at Cuttymanhill; the portion from Pluck to Cuttyman was abandoned in 1863, and the new line to join the Londonderry and Lough Sw Railway in the parish of Burt sanctioned.

Power is given to the Letterkenny Company to purchase the Londonderry Lough Swilly line in case any persons other than the Londonderry and Lough Sw Company become entitled to sell it, and to raise the capital required for such purchase

HE MIDLAND COUNTIES AND SHANNON JUNCTION RAILWAY.

Midland Counties and Shannon Junction Railway.

From Clara to Meelick, with a Bridge across the Shannon.

LENGTH OF AUTHORIZED LINE.

MAIN LINE

	Miles.
RA to Banagher	about $17\frac{3}{4}$

EXTENSION AUTHORIZED BUT NOT COMMENCED.

a.) The Meelick Extension (from Banagher to Meelick)	$5\frac{3}{4}$
Total mileage authorized	$23\frac{1}{2}$

CAPITAL.

ital authorized:—

	£
Shares	115,000
Borrowing Powers	38,300
Total	£153,300

ancial position on the 31st of December 1865, as ascertained by the Commission:—

ital raised by the Company:—

	£
Ordinary Shares	47,711
Debentures	100
Total Capital	£47,811

	£
loating Liabilities, less Floating Assets	27,477

s railway, when completed, will accommodate the district between King's County ipperary on the one side and Galway on the other.

THE MAIN LINE.

Clara to Banagher ($17\frac{3}{4}$ miles).

line was authorized in 1861; the time to complete the works was extended in 21 & 25 Vict. c. 246. to the 16th of July 1869. The land has all been taken on the main line and 29 & 30 Vict. c. 182 or or included in the floating liabilities, but during the last three years no progress en made on the main line.

EXTENSION AUTHORIZED BUT NOT COMMENCED.

(*a.*) *The Meelick Extension.*

Banagher to Meelick ($5\frac{3}{4}$ miles).

works on the extension have not been commenced though authorized in 1861, land has been taken.

TIONS OF THE MIDLAND COUNTIES AND SHANNON JUNCTION WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
eat Southern and Western	Near Clara	100

The Great Southern and Western Railway.

Midland Counties and Shannon Junction Company has a right to use the Clara of the Great Southern and Western Company, and intervening portions of the a rent of 300*l.* a year, and to have traffic forwarded by the Clara and Streamstown of the Midland Great Western to all stations on that railway except Dublin place within 19 miles of Dublin.

Newry and Greenore (Co. Louth) Railway.

22. THE NEWRY AND GREENORE (Co. LOUTH) RAILWAY.

LENGTH OF AUTHORIZED LINE.

	Miles.
Newry to Greenore (Co. Louth) - - -	14

CAPITAL.

Capital authorized :—	£
Shares - - - -	202,000
Borrowing Powers - - -	67,200
Total - - -	£269,200

Financial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :—	£
Ordinary Shares - - -	31,879
Floating Liabilities, less Floating Assets - -	60,134

This railway will connect the Newry and Armagh line with the proposed pier Greenore.

THE LINE.

26 & 27 Vict. c. 229. 30 Vict. c. 96.

The line was authorized in 1863. In the year 1867 the time for completing the wo was extended to June 1870. Land has been taken for 11 miles, but only a short tur commenced at Carlingford and a station platform at Newry.

Relations of the Newry and Greenore with other Railway Companies.

The lines in connexion with the Newry and Armagh are stated in the follow table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Line.		
The Newry and Armagh - - -	Newry - - -	126
Line authorized but not commenced.		
The Dundalk and Greenore - - - -	Near Greenore - - -	47

The Newry and Armagh Railway.

Traffic arrangements are sanctioned between the Newry and Armagh and the New and Greenore Companies.

The Dundalk and Greenore Railway.

The power to make the pier at Greenore has lapsed to the Dundalk and Green Company, but the Newry and Greenore Company retains a right of using the works of becoming joint owners on certain terms, so that the line is nearly in the position one authorized but not completed.

23. THE PARSONSTOWN AND PORTUMNA BRIDGE RAILWAY.

Parsonstown and Portumna Bridge Railway.

LENGTH OF AUTHORIZED LINE.

	Miles.
Parsonstown to Portumna Bridge - - - -	12½

CAPITAL.

apital authorized:—

	£
Shares - - - - - - -	65,000
Borrowing Powers - - - - -	21,600
Total - - -	£86,600

inancial position on the 4th of May 1867, as ascertained by the Commission:—

apital raised by the Company:—

	£
Ordinary Shares - - - -	32,363
Preference Shares - - - -	12,400
Debentures - - - - -	7,878
Loan Commissioners - - - -	6,000
Total Capital - - -	£58,641
r. Floating Assets, less Floating Liabilities - - -	£5,054

his railway is an extension of the Parsonstown branch of the Great Southern and stern Railway to the River Shannon.

he Parsonstown and Portumna Bridge Extension Company obtained powers in 1864 rect a railway bridge across the River Shannon, and to continue its railway to the town ortumna, but these powers expired in July 1867 without having been exercised.

he line will connect the Great Southern and Western Railway with the Shannon, and Parsonstown and Portumna Bridge Company is authorized to purchase steamers work on that river, between Portumna Bridge and Killaloe.

THE LINE.

he line was authorized in 1861, and in 1866 the time for completing the works was ended to the 11th of June 1868; the line is nearly ready for traffic. The whole of land has been taken, and the sum for payment of it has been included either in capital expended or in floating liabilities. 24 & 25 Vict. c. 142. 29 Vict. c. 57.

LATIONS OF THE PARSONSTOWN AND PORTUMNA BRIDGE WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
Great Southern and Western - -	Near Parsonstown - -	100

The Great Southern and Western Railway.

he Great Southern and Western Company has subscribed 12,000*l.* towards the dertaking, and powers are reserved to that Company for working, leasing, or purchasing Parsonstown and Portumna Bridge Railway.

Southern Railway.

24. THE SOUTHERN RAILWAY.

From Junction with the Great Southern and Western Railway near THURLES to CLONMEL with Branches to Collieries at Ballingarry.

LENGTH OF AUTHORIZED LINE.

MAIN LINE.

	Miles.
THURLES JUNCTION to CLONMEL - - - -	24

(*a.*) THE COLLIERIES BRANCHES.

Graystown Junction to Capper Colliery in Ballingarry, and lines to Ballynastic and Earlshill Collieries - - -	9½
Total number of miles authorized - -	33½

CAPITAL.

Capital authorized :—	£
Shares - - - - - -	231,000
Borrowing Powers - - - -	77,000
Total - - - - -	£308,000

Financial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :—	
Ordinary Shares - - - -	£86,458
Total - - - - -	£86,458
Floating Liabilities, less Floating Assets - - -	£28,072

This railway, when completed, will establish a second route from Clonmel to Dubli and from Thurles to the seaport of Waterford.

THE MAIN LINE.

THURLES JUNCTION to CLONMEL - - - 24 miles.

28 & 29 Vict. c. 353. 29 & 30 Vict. c. 271.

The main line was authorized in 1865, and a deviation in 1866.

The works of the line for eight miles (from Thurles Junction to Laffan's Bridge) a in a forward state.

(*a.*) *The Collieries Branches.*

GRAYSTOWN JUNCTION to the COLLIERIES, near BALLINGARRY - - 9½ miles.

The branch to Capper Colliery in Ballingarry, with two short lines to Ballynast and Earlshill Collieries, were authorized in 1866. The powers for compulsory purcha of land expire on the 23rd of July 1869.

RELATIONS OF THE SOUTHERN WITH OTHER RAILWAY COMPANIES.

The lines in connexion with the Southern are stated in the following table :—

Name of Railway Company.	Point of Junction.	Page of Report.
The Great Southern and Western - - -	Thurles - - - - - -	100
The Waterford and Limerick - - - -	Clonmel - - - - -	140

The Great Southern and Western Railway.

The Southern Railway joins this line one mile south of Thurles station, and workin agreements between the Companies are authorized.

The Waterford and Limerick Railway.

The Southern Railway joins the Waterford and Limerick line at the Clonmel station provision is made for the use of the station and for working agreements between the tw Companies.

25. THE WATERFORD, NEW ROSS, AND WEXFORD JUNCTION RAILWAY.

Waterford, New Ross, and Wexford Railway.

LENGTH OF AUTHORIZED LINE.

MAIN LINE.

	Miles.
Bagenalstown to Ballywilliam - - -	20¾

EXTENSION AND BRANCH AUTHORIZED BUT NOT COMMENCED.

(*a.*) The Waterford Extension (Ballywilliam to Waterford)	19
(*b.*) The Ballyhoge Branch (Ballywilliam to Ballyhoge Junction) - - - - - -	14¼
Total number of miles authorized - -	54

CAPITAL.

Capital authorized:—	£
Shares - - - - - -	330,000
Borrowing Powers - - - -	110,000
Total - - - -	£440,000

Financial position as ascertained by the Commission:—

Up to the 7th December 1867 no capital had been raised by the issue of shares (except- g for Directors' qualification), or by loan, the promoters having borne the Engineering, rliamentary, and other expenses.

This Company has purchased the Bagenalstown and Wexford railway, which line d been completed from Bagenalstown to Ballywilliam, and which after being worked for short time by the Great Southern and Western Company, was closed to public traffic 1863. The Company proposes an extension to New Ross and Waterford, and a anch to the Dublin, Wicklow, and Wexford line between Enniscorthy and Wexford.

THE MAIN LINE.

Bagenalstown to Ballywilliam - - - 20¾ miles.

The line from Bagenalstown to Ballywilliam was constructed under an Act of 1854 the Bagenalstown and Wexford Company, subject to certain alterations and deviations nctioned in 1856 and 1859. On the 27th May 1864 the Bagenalstown and Wexford ompany was adjudged bankrupt under the provision of the Irish Bankrupt and Insolvent et of 1857 (since repealed), the bond and share capital and judgment debts amounting to tween 200,000*l.* and 300,000*l.* Under an Act of 1865, the railway was sold in nkruptcy for a sum of 25,000*l.*

17 & 18 Vict. c. 136.
19 & 20 Vict. c. 138.
22 & 23 Vict. c. 36.
28 & 29 Vict. c. 280.

In the Act of 1866 it is recited that the purchaser Mr. Motte was willing to sell the e to the Waterford, New Ross, and Wexford Company for 25,000*l.* if paid before e 10th of February 1867. In the Act of 1867 it is recited that the Bagenalstown and exford line had not been purchased by that Company, but would be so at a valuation be made by a valuator appointed by the Board of Public Works in Ireland. The nount fixed in November 1867 was 179,760*l.*, one fourth to be paid in cash, and the rest shares. The Company not having paid the cash, the valuator, by a further award in nuary 1868, declared Mr. Motte entitled to rentcharge at five per cent. on 44,940*l.*, 44,940*l.* five per cent. debenture stock in perpetuity, to 44,940*l.* in preference shares, d to 44,940*l.* in ordinary shares.

Waterford, New Ross, and Wexford Railway.

The following table shews the dates when the works were authorized, and the seve portions of the line opened for traffic :—

Date of Act.	Date of opening and closing of Line.			
	From	To	Distance.	Date.
			Miles.	
3rd July 1854 - -	Bagenalstown - -	Borris - - -	8	11 Dec. 1858.
" " - -	Borris - - -	Ballywilliam - -	13	13 March 1862.
	The line was closed for traffic - - - -			1863.

The main line having been so long closed would require repairs before being ag opened.

(*a.*) *The Waterford Extension.*

Ballywilliam to Waterford (19 miles).

29 & 30 Vict. c. 348. 30 & 31 Vict. c. 129

This extension was authorized in 1866, subject to deviations in 1867. The usu time of three years, from 1866, is allowed for taking land, and five years for completi the works. No land for this extension has yet been taken.

(*b.*) *The Ballyhoge Branch.*

Ballywilliam to Ballyhoge Junction (14¼ miles.)

This branch was authorized in 1866, and the usual time of three years allowed f taking land, but no land has yet been taken.

RELATIONS OF THE WATERFORD, NEW ROSS, AND WEXFORD JUNCTION WITH OTHER RAILWA COMPANIES.

The lines in connexion with the Waterford, New Ross, and Wexford are stated in th following table :—

Name of Railway Company.	Point of Junction.	Page of Report.
The Great Southern and Western - - -	Bagenalstown.	100
The Dublin, Wicklow, and Wexford - -	Ballyhoge Junction.	94

The Great Southern and Western Railway.

The main line of the Waterford, New Ross, and Wexford Company is an extensio of the Great Southern and Western railway. Authority is given to enter into traff arrangements.

The Dublin, Wicklow, and Wexford Railway.

The Ballyhoge branch, if made, would connect the main line with the authorize extension of the Dublin, Wicklow, and Wexford line between Enniscorthy and Wexfor Authority is given for traffic arrangements.

RAILWAYS (IRELAND) COMMISSION.

RAILWAYS, CLASS III.—LINES COMPLETED AND CARRYING TRAFFIC.

No. in Appendix and Map.	Railways, Class III.—Lines Completed and carrying Traffic.	Mileage.			Appendix.
		Single.	Double.	Total.	Page.
26.	Belfast and County Down	44¼	—	44¼	70
27.	Belfast, Holywood, and Bangor	12¼	—	12¼	72
28.	Belfast and Northern Counties	92½	6¾	99¼	74
29.	*Carrickfergus and Larne*	15½	—	15½	77
30.	*Londonderry and Coleraine*	35¾	—	35¾	78
31.	Cork and Bandon	20	—	20	80
32.	*Cork and Kinsale*	10¾	—	10¾	82
33.	Cork, Blackrock, and Passage	6¼	—	6¼	83
34.	Cork and Macroom Direct	23¾	—	23¾	84
35.	Dublin and Belfast Junction	—	55½	55½	85
36.	*Banbridge Junction*	6¾	—	6¾	87
37.	Dublin and Drogheda	43	31¾	74¾	89
38.	Dublin and Meath	35½	—	35½	92
39.	Dublin, Wicklow, and Wexford	86½	12	98½	94
40.	*Dublin and Kingstown*	2¼	6	8¼	98
41.	Great Southern and Western	228½	190¼	418¾	100
42.	*Cork and Limerick Direct*	17¼	—	17¼	106
43.	Irish North Western	86¼	—	86¼	108
44.	*Enniskillen, Bundoran, and Sligo*	35½	—	35½	111
45.	*Finn Valley*	13¼	—	13¼	112
46.	*Londonderry and Enniskillen*	50¼	9¾	60	114
47.	Londonderry and Lough Swilly	14¾	—	14¾	116
48.	Midland Great Western	131	115½	246½	118
49.	*Athenry and Tuam*	15¼	—	15¼	122
50.	*Great Northern and Western*	82¾	—	82¾	124
51.	Newry and Armagh	21	—	21	126
52.	Newry, Warrenpoint, and Rostrevor	6¼	—	6¼*	128
53.	Ulster	16	48½	64½	130
54.	*Banbridge, Lisburn, and Belfast*	15	—	15	132
55.	*Portadown, Dungannon, and Omagh*	41	—	41	134
56.	Waterford and Kilkenny	29	—	29	136
57.	*Kilkenny Junction*	19	—	19	138
58.	Waterford and Limerick	53¾	23½	77¼	140
59.	*Limerick and Castleconnel*	13	—	13	143
60.	*Limerick and Ennis*	24	—	24	145
61.	*Limerick and Foynes*	25½	¾	26¼	146
62.	*Rathkeale and Newcastle*	10	—	10	148
63.	Waterford and Tramore	7¼	—	7¼	150
64.	West Cork	17½	—	17½	151
	Total	1,408	500¼	1,908¼	

The lines leased or worked by other companies are marked in italics, immediately below the names of the company by which they are worked.

* Including town of Newry connecting line, three-quarters of a mile, joint property between this company and Newry and Armagh.

The area and population which in the following histories are assumed to be accommodated by the respective railways have been calculated on the following principle :—

Excluding an area of 2,498,101 acres and a population of 416,038 persons which have no railway accommodation, the area and population of the rest of Ireland have been divided between the railways already completed and carrying traffic, according to their proximity to the railways. In the case of a town being accommodated by more than one railway, its entire population is given to each.

Belfast and County Down Railway.

26. THE BELFAST AND COUNTY DOWN RAILWAY.

BELFAST to DOWNPATRICK, with branches to Donaghadee and Ballynahinch.

LENGTH OF LINE.

	Single.	Double.	To
MAIN LINE.	Miles.	Miles.	M.
BELFAST to DOWNPATRICK - - - - - - -	26¾	—	2
BRANCHES.			
(*a.*) The DONAGHADEE BRANCH (from Comber to Donaghadee) - -	14	—	1
(*b.*) The BALLYNAHINCH BRANCH (from Ballynahinch Junction to Ballynahinch)	3½	—	
Total number of miles owned by the Company - - -	44¼	—	4

Length of main line - - - 26¾ miles.
Length of branches - - - 17½ ,,
Total length of main line and branches - 44¼ miles.

CAPITAL.

Capital authorized :—

	£
Shares - - - - -	515,000
Borrowing Powers - - - -	166,666
Total - - - -	£681,666

Financial position on the 31st of July 1867, as ascertained by the Commission :—

Capital raised by the Company :—

	£
Ordinary Shares - - - -	237,287
Preference Shares - - - -	193,400
Debentures - - - -	166,643
Total Capital - - -	£597,330

Floating liabilities, less floating assets - - - £17,208

Net revenue of each of the three last years, from Company's accounts :—

	£
1864–65 - - - - -	18,713
1865–66 - - - - -	20,035
1866–67 - - - - -	20,337
Average of three years - -	£19,695

Dividend on Ordinary Shares :—

1864–65
1865–66
1866–67 } - - - - - Nil.

Dividend on Preference Shares :—

*Average of three years ended the 31st of July 1867, 4*l.* 19*s.* 0*d.* per c

Interest (average rate on the 31st of July 1867) :—

On Debentures - - - - 4*l.* 16*s.* 6*d.* per cent.

This line connects Downpatrick, Newtownards, and Comber, and a large part of county of Down with Belfast. It extends also to Donaghadee, a port on the Irish c at the narrow part of the Irish Channel, and distant 22½ miles from the small por Portpatrick, on the Scotch side. Considerable works have been carried out, both Donaghadee and Portpatrick, with a view of establishing a steamboat route between two countries, but the Lords Commissioners of Her Majesty's Treasury decided aga subsidizing the steamboat service, and have by Minute of the 5th of July 1867, signi their intention to propose a measure to Parliament authorizing an advance to the Bel and County Down Railway Company by way of loan of 166,666*l.* at 3½ per cent.

The district of country which may be considered to be accommodated by the embraces an area of 324,514 acres, with a population of 262,897 persons.

*Besides this the Company has paid, during the three years, arrears amounting to 5,021*l.* b 2*l.* 13*s.* 11*d.* per cent. on the shares.

Belfast and County Down Railway.

THE MAIN LINE.

Belfast to Downpatrick.

(26¾ miles, single line.)

he main line to Comber was constructed under an Act 1846, and from Comber to 9 & 10 Vict. c. 87.
patrick under an Act of 1855. 21 & 22 Vict. c. 78.

he following table shews the dates when the works were authorized, and the several ons of the line sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ne 1846 - -	Belfast - - -	Comber - - -	8	29 April 1850.
y 1855 - -	Comber - -	Ballynahinch Junction	9½	8 Sept. 1858.
„ - -	Ballynahinch Junction	Downpatrick - -	9	25 March 1859.

BRANCHES.

(*a.*) *The Donaghadee Branch.*

Comber to Donaghadee.

(14 miles, single line.)

is branch as far as Newtownards was constructed under the Act of 1846, and 18 Vict. c. 18.
Newtownards to Donaghadee under that of 1855, the time for completing the 23 Vict. c. 60.
s having been extended in 1858, and again in 1860.

e following table shews the dates when the works were authorized, and the several ons of the branch sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ne 1846 - -	Comber - - -	Scrabo - - -	4	29 April 1850.
y 1858 - -	Scrabo - - -	Donaghadee - -	10	27 May 1861.

(*b.*) *The Ballynahinch Branch.*

Ballynahinch Junction to Ballynahinch.

(3½ miles, single line.)

is branch was constructed under the Act of 1855.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
y 1855 - -	Ballynahinch Junction	Ballynahinch - -	3½	8 Sept. 1858.

Relations of the Belfast and County Down with other Railway Companies.

e lines in connexion with the Belfast and County Down are stated in the following :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Line.		
elfast, Holywood, and Bangor - -	Belfast - - - - - -	72
Line commenced but not completed.		
elfast Central - - - - -	Belfast - - - - -	57
ownpatrick, Dundrum, and Newcastle -	Downpatrick - - - -	58

Belfast and County Down Railway.

The Belfast, Holywood, and Bangor Railway.

This line has a terminus in Belfast, irrespective of but adjoining the terminus of Belfast and County Down Company.

The Belfast and County Down Company supply locomotive power to the Bel Holywood, and Bangor Company for 8*d.* per train mile.

The Belfast Central.

This line when completed will connect the Belfast and County Down with Ulster the Belfast and Northern Counties lines, and with a central station in Belfast.

The Downpatrick, Dundrum, and Newcastle Railway.

This is an extension of the Belfast and County Down line to Newcastle. A Bill been introduced in the present Session for authorizing arrangements between the Companies.

The Portpatrick Railway.

Under the Act of 1857 the Belfast and County Down Company subscribed 15,000 this railway.

Belfast, Holywood, and Bangor Railway.

27. THE BELFAST, HOLYWOOD, AND BANGOR RAILWAY.

Belfast to Bangor.

LENGTH OF LINE.

	Single.	Double.	To
	Miles.	Miles.	Mi
Belfast to Bangor - - - - -	12¼	—	1
Total number of miles owned by the Company - - -	12¼	—	1

CAPITAL.

Capital authorized:—

	£
Shares - - - - -	300,000
Borrowing Powers - - - -	99,000
Total - - - -	£399,000

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:

	£
Ordinary Shares - - - -	156,868
Preference Shares - - - -	79,220
Debentures - - - -	38,000
Total Capital - - -	£274,088

Floating liabilities, less floating assets - - - £60,870

Net revenue of each of the last two years, as returned by the Company:—

	£
1865–66 - - - - -	1,032
1866–67 - - - - -	2,029
Average of two years -	£1,443

Belfast, Holywood, and Bangor Railway.

Dividend on Ordinary Shares :—

1865–66 }
1866–67 } - - - Nil.

Dividend on Preference Shares :—

Average of three years ended 30th June 1867 - Nil.

Interest (average rate on the 30th of June 1867) :—

On Debentures - - - 5*l.* 0*s.* 0*d.* per cent.

This railway connects the towns of Bangor and Holywood, and intermediate places, with Belfast.

The district of country which may be considered to be accommodated by the line traces an area of 17,618 acres, with a population of 130,085 persons.

THE LINE.

The line to Holywood was made by the Belfast and County Down Company under Act of 1846, and sold to the Belfast, Holywood, and Bangor Company in 1865 for 000*l.*, and a yearly rental of 5,000*l.*, redeemable. 9 & 10 Vict. c. 87.

The line was extended to Bangor under an Act of 1860, the time for completing the ks having been extended in 1863. 23 Vict. c. 61. 26 & 27 Vict. c. 123.

The following table shews the dates when the works were authorized, and the several ions of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
une 1846 - -	Belfast - - -	Holywood - -	5	31 July 1848.
ay 1860 - -	Holywood - -	Bangor - - -	8	18 May 1865.

RELATIONS OF THE BELFAST, HOLYWOOD, AND BANGOR WITH OTHER RAILWAY COMPANIES.

The lines in connexion with the Belfast, Holywood, and Bangor are stated in the owing table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Line.		
Belfast and County Down - - -	Belfast - - - -	70
Line commenced but not completed.		
Belfast Central - - - -	Belfast - - - -	57

The Belfast and County Down Railway.

The stations of this Company and of the Belfast and County Down Railway in East are contiguous, though not worked as one.

The Belfast Central Railway.

When completed this railway will connect the Belfast, Holywood, and Bangor Railway the railways on the west side of the river Lagan, and with the proposed central ion in Belfast.

Belfast and Northern Counties Railway.

28. THE BELFAST AND NORTHERN COUNTIES RAILWAY.

BELFAST to COLERAINE with Branches to Carrickfergus, Cookstown, and Portrush

LENGTH OF LINE.

	Single.	Double.	Total.
MAIN LINE.	Miles.	Miles.	Miles.
BELFAST to LONDONDERRY AND COLERAINE LINE at COLERAINE	55½	6¾	62
BRANCHES.			
(*a.*) The CARRICKFERGUS BRANCH (from Carrick Junction to near Carrickfergus).	2¼	—	2
(*b.*) The COOKSTOWN BRANCH (from Cookstown Junction to Cookstown)	29	—	29
(*c.*) The PORTRUSH BRANCH (from Coleraine to Portrush)	5¾	—	5
Total number of miles owned by the Company	92½	6¾	99
LINES WORKED AND MAINTAINED BY THE COMPANY.			
The CARRICKFERGUS and LARNE	15½	—	15
The LONDONDERRY and COLERAINE	35¾	—	35
Total mileage, worked and maintained by the Company	143¾	6¾	150

Length of main line	62¼	miles.
Length of branches	37	„
Total length of main line and branches	99¼	miles.
Length of line worked and maintained but not owned by the Company.	51¼	„
Total mileage worked and maintained	150½	„

CAPITAL.

Capital authorized:—

	£
Shares	910,000
Borrowing Powers	323,833
Total	£1,233,833

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:

	£
Ordinary Shares	556,703
Preference Shares	210,500
Debentures	285,184
Debenture Stock	110
Total Capital	£1,052,497
Floating liabilities, less floating assets	£89,693

Net revenue of each of the last three years, from Company's accounts:—

	£
1864–65	46,644
1865–66	51,957
1866–67	55,223
Average of three years	£51,274

Dividend on Ordinary Shares:—

1864–65	3*l.* 15*s.* 0*d.* per cent.
1865–66	4*l.* 10*s.* 0*d.* „
1866–67	5*l.* 0*s.* 0*d.* „

Dividend on Preference Shares:—

Average of three years ended the 30th of June 1867, 4*l.* 1*s.* 3*d.* per cent.

Belfast and Northern Counties Railway.

terest (average rate on 30th June 1867) :—

	£	s.	d.	
On Debentures - - -	4	9	5	per cent.
On Debenture Stock - - -	4	0	0	per cent.

his railway connects the counties of Londonderry, Antrim, and part of Tyrone, with st. The district of country which may be considered to be accommodated by line embraces an area of 866,559 acres, with a population of 441,299 persons.

THE MAIN LINE.

Belfast to Coleraine.

(6¾ miles double line, 55½ miles single line.)

The main line from Belfast to Ballymena was constructed by the Belfast and Ballyna Company under an Act of 1845. 8 & 9 Vict. c. 81.

The extension of the main line to the junction with the Londonderry and Coleraine at Coleraine was constructed by the Ballymena, Ballymoney, Coleraine, and Portrush ction Company under Acts of 1853 and 1859, and was purchased by the Belfast and lymena Company, which took the name of the Belfast and Northern Counties mpany in the year 1866. 16 & 17 Vict. c. 80. 22 Vict. c. 31. 23 Vict. c. 46.

The following table shews the dates when the works were authorized, and the several tions of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1845 - -	Belfast - -	Ballymena - -	33¾	14 April 1848.
uly 1853 - -	Ballymena - -	Coleraine - -	28	27 Nov. 1855.
April 1859 -	Coleraine - -	Junction with Londonderry and Coleraine Line.	½	15 Nov. 1860.

Branches.

(*a.*) *The Carrickfergus Branch.*

Carrick Junction to the Carrickfergus and Larne Line near Carrickfergus.

(2¼ miles, single line.)

This branch was constructed under the Act of 1845. Since the opening of the rrickfergus and Larne line the Belfast and Northern Counties Company has used e Carrickfergus station of the Carrickfergus and Larne Company. 8 & 9 Vict. c. 81.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1845 -	Carrickfergus Junction.	Carrickfergus -	2¼	14 April 1848.

(*b.*) *The Cookstown Branch.*

Cookstown Junction to Cookstown.

(29 miles, single line.)

This branch was constructed as far as Randalstown under the Act of 1845, and was npleted under an Act of 1853. 9 & 10 Vict. c. 81. 16 & 17 Vict. c. 68.

The following table shows the dates when the works were authorized and the several tions of the branch line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1845 - -	Cookstown Junction	Randalstown - -	2	14 April 1848.
June 1853 - -	Randalstown - -	Cookstown -	27	16 October 1856.

Belfast and Northern Counties Railway.

(c.) *The Portrush Branch.*

Coleraine to Portrush.

(5¾ miles, single line.)

16 & 17 Vict. c. 80.

This branch was constructed under the Act of 1853 by the Ballymena, Ballymon Coleraine, and Portrush Junction Company, and purchased by the Belfast and North Counties Company under the Act of 1858.

Date of Act.	Length sactioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
8 July 1853 - -	Coleraine - -	Portrush - -	Miles. 6½	27 Nov. 1855.

Relations of the Belfast and Northern Counties with other Railway Companies

The lines in connexion with the Belfast and Northern Counties are stated in t following table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Lines.		
The Carrickfergus and Larne - -	½ a mile from Carrickfergus -	77
The Londonderry and Coleraine - -	½ a mile from the Coleraine Station	78
Line commenced but not completed.		
The Belfast Central - - -	York Street Terminus - -	57

The Carrickfergus and Larne Railway.

This railway is a continuation of the Carrickfergus branch of the Belfast and Northe Counties line to the town and harbour of Larne, and is worked under an agreeme herein-after mentioned (p. 78) for a minimum rent of 3,000*l.* a year.

The Londonderry and Coleraine Railway.

This railway forms a continuation of the Belfast and Northern Counties line Londonderry, and is worked under an agreement herein-after mentioned (p. 80) f 2*s.* 2*d.* per train mile, subject to certain conditions and modifications.

The Belfast Central.

The authorized line of the Belfast Central Railway would, if made, connect the Belfa and Northern Counties Railway with the Ulster and the Belfast and County Down line and with a central station in Belfast. By the Bill of the present session it is propos to substitute a tramway, to be laid down by the Belfast Harbour Commissioners as t means of communication.

Carrickfergus and Larne Railway.

29. THE CARRICKFERGUS AND LARNE RAILWAY.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
ICKFERGUS to LARNE PIER - - - -	15½	—	15½

The line is worked and maintained by the Belfast and Northern Counties Company.

CAPITAL.

Capital authorized :—

	£
Shares - - - - - -	125,000
Borrowing Powers - - - -	41,500
Total - - -	£166,500

Financial position on the 30th of June 1867, as ascertained by the Commission :—
Capital raised by the Company :—

	£
Ordinary Shares - - - -	82,529
Debentures - - - - -	41,010
Total Capital - - -	£123,539

Floating liabilities, less floating assets - - - £1,348

Net revenue of each of the three last years, as returned by the Company :—

	£
1864–65 - - - - - -	693
1865–66 - - - - - -	1,334
1866–67 - - - - - -	2,245
Average for the three years - - -	£1,424

Dividends on Ordinary Shares :—

1864–65 - - - - - -	Nil.
1865–66 - - - - - -	Nil.
1866–67 - - - - - -	Nil.

Interest on Debentures :—

	£ s. d.
Average rate on the 30th of June 1867 -	4 19 8 per cent.

This railway connects the town and harbour of Larne via Carrickfergus with the Belfast & Northern Counties line.

The district of country which may be considered to be accommodated by the line embraces an area of 66,784 acres, with a population of 27,099 persons.

THE LINE

The line was constructed under an Act of 1860; and the following table shews the dates when the works were authorized and sanctioned for traffic :— 23 Vict. c. 54.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
May 1860 - -	Carrickfergus -	Larne - - -	15	29 Sept. 1862.

Carrickfergus and Larne Railway.

RELATIONS OF THE CARRICKFERGUS AND LARNE WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
The Belfast and Northern Counties - -	Half a mile from Carrickfergus -	74

The Belfast and Northern Counties Railway.

The Belfast and Northern Counties Company has subscribed 12,500*l.* to the undertaking. The use of the Carrickfergus station and of the intermediate portion of the line is secured to that Company.

By agreement under Parliamentary sanction, dated the 7th February 1866, the line worked by the Belfast and Northern Counties Company, which receives 3,000*l.* per annum, and 50 per cent. of all excess above 4,500*l.* per annum. The agreement to remain in force for seven years from 1st November 1865.

Londonderry and Coleraine Railway.

30. THE LONDONDERRY AND COLERAINE RAILWAY.

LONDONDERRY to COLERAINE, with branch to Newtownlimavady.

LENGTH OF LINE.

	Single.	Double.	Total
MAIN LINE.	Miles.	Miles.	Miles.
LONDONDERRY to COLERAINE - - - - - -	32½	—	32½
BRANCH.			
(*a.*) THE NEWTOWNLIMAVADY BRANCH (from Broharris Junction to Newtownlimavady).	3¼	—	3¼
Total number of miles owned by the Company - - - -	35¾	—	35¾

Length of main line - - - - 32½ miles.
Length of branch - - - - 3¼ „
Total length of main line and branch - 35¾ miles.

The line is worked and maintained by the Belfast and Northern Counties Company.

CAPITAL.

Capital authorized:—

	£
Shares - - - - -	325,775
Borrowing Powers - - - -	262,763
Total - - -	£588,538

Financial position on the 30th of June 1867, as ascertained by the Commission:—
Capital raised by the Company:—

	£
Ordinary Shares - - - -	176,050
Preference Shares - - - -	146,335
Debentures - - - - -	236,991
Total Capital - - -	£559,376
Floating liabilities, less floating assets - - -	£11,089

Londonderry and Coleraine Railway.

Net revenue of each of the last three years, as returned by the Company :—

	£
1864–65	8,679
1865–66	2,672
1866–67	4,992
Average for three years	£5,448

Dividend on Ordinary Shares :—

	£
1864–65	Nil.
1865–66	
1866–67	

Dividend on Preference Shares :—

Average of three years ended the 30th of June 1867 - Nil.

Interest (average rate on the 30th of June 1867) :—

On Debentures - - - - 3*l.* 16*s.* 10*d.* per cent.

The line connects Londonderry with the Belfast and Northern Counties line at Coleraine.

The district of country which may be considered to be accommodated by the line traces an area of 231,557 acres, with a population of 75,834 persons.

THE MAIN LINE.

Londonderry to Coleraine.

(32½ single miles.)

The main line was constructed under an Act of 1845. 8 & 9 Vict. c. 187.

The following table shews the dates when the works were sanctioned, and the several sections of the line opened for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
August 1845 -	Londonderry -	Broharris Junction -	15	23 Dec. 1852.
„ „ -	Broharris Junction -	Coleraine - -	17½	18 July 1853.

(*a.*) *The Newtownlimavady Branch.*

Broharris Junction to Newtownlimavady.

(3¼ single miles.)

This branch was constructed under an Act of 1850. 13 Vict. c. 17.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
May 1850 -	Broharris Junction -	Newtownlimavady -	3¼	23 December 1852.

Relations of the Londonderry and Coleraine with other Railway Companies.

Name of Railway Company.	Point of Junction.	Page of Report.
Belfast and Northern Counties - -	Coleraine - - - -	74

Londonderry and Coleraine Railway.

The Belfast and Northern Counties Railway.

The Belfast and Northern Counties Company works the Londonderry and Colera Railway, under an agreement of the 10th of April 1865, for two shillings and twopence train mile, to be reduced if the mileage exceeds 7,500 miles per month. The Colera Company paying for the renewal of the line and half the poor's rates.

31. THE CORK AND BANDON RAILWAY.

Cork and Bandon Railway.

Cork to Bandon.

LENGTH OF LINE.

	Single.	Double.	Tota
MAIN LINE.	Miles.	Miles.	Mile
Cork to Bandon	20	—	20
Total number of miles owned by the Company	20	—	20
LINE WORKED AND MAINTAINED BY THE COMPANY.			
Cork and Kinsale Junction (from Junction with Cork and Bandon Line to Kinsale)	10¾	—	10
Total worked and maintained by the Company	30¾	—	30

Length of main line - - - - - 20 miles.
Length of line worked and maintained, but not owned by the Company - - - - - 10¾ ,,
Total mileage worked and maintained - - 30¾ mil

CAPITAL.

Capital authorized:—

	£
Shares - - - - -	318,000
Borrowing Powers - - - -	80,000
Total - - - -	£398,000

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares - - - -	175,241
Preference Shares - - - No. 1.	48,000
No. 2.	29,593
Debentures - - - - -	62,596
Debenture Stock - - - -	8,310
Loan Commissioners - - - -	8,912
Total Capital - - - -	£332,652
Floating liabilities, less floating assets - - -	£7663

Net revenue of each of the last three years, from Company's accounts:—

	£
1864–65 - - - - -	7,327
1865–66 - - - - -	8,115
1866–67 - - - - -	11,391
Average for three years - - -	£8,944

Dividend on Ordinary Shares:—

1864–65
1865–66
1866–67 } - - - - - Nil.

Cork and Bandon Railway.

		£	s.	d.	
ividend on Preference Shares :—					
Average of three years ended the 30th of June 1867	No. 1. -	5	10	0	per cent.
	No. 2.* -	4	0	0	„
iterest (average rate on the 30th of June 1867) :—					
On Debentures - - - - -		5	8	3	„
On Debenture Stock - - - - -		4	0	0	„
iterest paid to Loan Commissioners :—					
Rate of Interest - - - - -		4	0	0	„

his railway, together with the Cork and Macroom, the Cork and Kinsale Junction, the West Cork, connect the southern and western part of the county with the city harbour of Cork.

he district of country which may be considered to be accommodated by the line races an area of 65,291 acres, with a population of 106,711 persons.

THE LINE.

he line from Carrigeens near Cork to Bandon was constructed under an Act of 5, and the extension to the present station in the city of Cork under an Act of 1847. 8 & 9 Vict. c. 122. 10 & 11 Vict. c. 194.

he following table shews the dates when the works were authorized, and the several ions of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
uly 1845 -	Bandon - - -	Ballinhassing -	10	30 July 1849.
uly 1845 -	Ballinhassing -	Carrigeens - -	10	6 Dec. 1851.
ly 1847 -	Carrigeens - - -	Cork - -		

Relations of the Cork and Bandon with other Railway Companies.

he lines in connexion with the Cork and Bandon Railway are stated in the following e :—

Name of Railway Company.	Point of Junction.	Page of Report.
Line worked and maintained.		
Cork and Kinsale Junction - -	13¼ miles from Cork - -	82
Other completed Lines.		
Cork and Macroom Direct -	Ballyphehane Junction - - -	84
West Cork - - - -	Bandon - - - -	151

The Cork and Kinsale Junction Railway.

his line may be considered a branch of the Cork and Bandon line, and is worked by t Company.

The Cork and Macroom Direct Railway.

his Company works over the Cork and Bandon line from Ballyphehane Junction to Cork station.

The West Cork Railway.

his line connects Dunmanway with the Cork and Bandon line at Bandon.

* Paid by deferred dividend warrants.

Cork and Kinsale Junction Railway.

32. THE CORK AND KINSALE JUNCTION RAILWAY.

From Innishannnon Junction to Kinsale.

LENGTH OF LINE.

	Single.	Double.	Tot
	Miles.	Miles.	Mi
Innishannon Junction to Kinsale - - - - - -	10¾	—	1(

This line is worked by the Cork and Bandon Company.

CAPITAL.

Capital authorized :—

	£
Shares - - - - - -	85,000
Borrowing Powers - - - -	28,200
Total - - - -	£113,200

Financial position on the 30th of June 1867, as ascertained by the Commission :—
Capital raised by the Company :—

	£
Ordinary Shares - - - -	20,650
Preference Shares - - - -	6,530
Debentures - - - -	21,600
Total Capital - - -	£48,780

Floating liabilities, less floating assets - - - £48,193

Net revenue of each of the last three years, from Company's accounts :—

	£
1864–65 - - - -	1,368
1865–66* - - - -	1,638
1866–67* - - - -	1,784
Average of three years - -	£1,597

Dividend on Ordinary Shares :—

1864–65 1865–66 1866–67 - - - - -	Nil.

Dividend on Preference Shares :—
Average of the three years ended the 30th of June 1867, Nil.

Interest (average rate on the 30th of June 1867) :—
On Debentures - - - 5*l.* 14*s.* 6*d.* per cent.

A receiver was appointed by the Irish Court of Chancery on the 21st of March 186
This line connects the port of Kinsale with the Cork and Bandon line.
The district of country which may be considered to be accommodated by the li
embraces an area of 65,842 acres, with a population of 20,157 persons.

THE LINE.

22 Vict. c. 23

The line was constructed under an Act of 1859.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
19 April 1859 -	Innishannon Junction	Kinsale - - -	11	22 June 1863.

* No published accounts after the 30th of June 1865 ; the remaining half-years' net revenues are tak
from the amount ascertained by the Commission.

ELATIONS OF THE CORK AND KINSALE JUNCTION WITH OTHER RAILWAY COMPANIES :—

Name of Railway Company.	Point of Junction.	Page of Report.
Cork and Bandon - - -	13¼ miles from Cork - -	80

The Cork and Bandon Railway.

his Company works and maintains the Cork and Kinsale Junction Railway for er cent. of the gross traffic.

Bill is being promoted in the present session for authorizing the sale or lease of line to the Cork and Bandon Company.

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33. THE CORK, BLACKROCK, AND PASSAGE RAILWAY.

CORK to PASSAGE.

LENGTH OF LINE.

	Single.	Double.	Total.
to PASSAGE - - - - - - - -	Miles. 6¼	Miles. —	Miles. 6¼

CAPITAL.

apital authorized :—

	£
Shares - - - - - -	130,000
Borrowing Powers - - - -	43,330
Total - - -	£173,330

inancial position on the 30th of April 1867, as ascertained by the Commission :—

Capital raised by the Company :

	£
Ordinary Shares - - - -	118,340
Debentures - - - - -	38,450
Loan Commissioners - - - -	3,324
Total Capital - - -	£160,114

r. Floating assets, less floating liabilities - - - £5,721

et revenue of each of the last three years, from Company's accounts :—

	£
1864–65 - - - - -	3,767
1865–66 - - - - -	4,401
1866–67 - - - - -	3,467
Average for three years - -	£3,878

ividend on Ordinary Shares :—

	£	*s.*	*d.*	
1864–65 - - - -	2	0	0	per cent.
1865–66 - - - -	2	0	0	,,
1866–67 - - - -	1	5	0	,,

terest (average rate on the 30th of April 1867) :—

On Debentures - - - 5*l.* 5*s.* 5*d.* per cent.

terest paid to Loan Commissioners :—

Rate of interest - - - 4*l.* 0*s.* 0*d.* per cent.

his railway connects the town of Passage and the suburb of Blackrock with the of Cork.

Cork, Blackrock, and Passage Railway.

The district of country which may be considered to be accommodated by the embraces an area of 20,959 acres, with a population of 89,904 persons.

THE LINE.

9 & 10 Vict. c. 148. 1 Vict. c. 8.

The line was constructed under an Act of 1846, upon the site of a line which been authorized in 1837, but the powers for making which had expired.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
16 July 1846 - -	Cork - - -	Passage - - -	Miles. 6	25 May 1850.

Cork and Macroom Direct Railway.

34. THE CORK AND MACROOM DIRECT RAILWAY.

From Junction near Cork with Cork and Bandon line to Macroom.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
Ballyphehane Junction to Macroom - - - - -	23¾	—	23¾

CAPITAL.

Capital authorized:—

	£
Shares - - - - - -	120,000
Borrowing Powers - - - -	40,000
Total - - - -	£160,000

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:

	£
Ordinary Shares - - - - -	69,096
Debentures - - - - -	37,350
Total Capital - -	£106,446

Floating liabilities, less floating assets - - - - £45,331

Net revenue since the opening of the line, as returned by the Company:—

	£
From the 12th of May to the 30th of June 1866 -	855
1866-67 - - - - - -	4,051
Average for period since line opened -	£4,346

Dividend on Ordinary Shares:—

1866-67 - - - - - 2*l.* 0*s.* 0*d.* per cent.

Interest (average rate on the 30th of June 1867):— £ *s.* *d.*

On Debentures - - - - - 5 10 10 per cent.

This railway connects the town of Macroom with the city and port of Cork. The district of country which may be considered to be accommodated by the line embraces an area of 226,673 acres, with a population of 124,849 persons.

THE LINE

Cork and Macroom Direct Railway.

he line was constructed under an Act of 1861.

24 & 25 Vict. c. 207.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
gust 1861 -	Ballyphehane Junction with the Cork and Bandon line.	Macroom - -	24	12 May 1866.

ELATIONS OF THE CORK AND MACROOM DIRECT WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
Cork and Bandon - - - -	Ballyphehane Junction - -	80

The Cork and Bandon Railway.

he Cork and Macroom Company is authorized to work over the Cork and Bandon Line, veen Ballyphehane Junction and Cork, and to use the station at Cork. The Board Trade is empowered to compel the Cork and Bandon Company to lay down an tional line of rails between these points, at the expense of the Cork and Macroom npany. Power is also given for traffic arrangements with the Cork and Bandon npany.

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35. THE DUBLIN AND BELFAST JUNCTION RAILWAY.

Dublin and Belfast Junction Railway.

DROGHEDA to PORTADOWN.

LENGTH OF LINE.

	Single.	Double.	Total.
MAIN LINE.	Miles.	Miles.	Miles.
GHEDA to PORTADOWN - - - - - - - -	—	55½	55½
Total number of miles owned by the Company - -	—	55½	55½
LINE WORKED AND MAINTAINED BY THE COMPANY.			
BANBRIDGE JUNCTION (from Scarva to Banbridge) - - -	6¾	—	6¾
Total mileage worked and maintained by the Company - -	6¾	55½	62¼

Length of main line - - - - 55½ miles.
Length of line worked and maintained but not owned by the Company - - - 6¾ „
Total mileage worked and maintained - - 62¼ miles.

CAPITAL.

Capital authorized :—	£
Shares - - - - -	873,500
Borrowing Powers - - - -	291,150
Total - - - -	£1,164,650

Dublin and Belfast Junction Railway.

Financial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :

	£
Ordinary Shares	873,500
Debentures	227,510
Debenture Stock	4,645
Total Capital	£1,105,655

Cr. Floating assets, less floating liabilities - £5,522

Net revenue of each of the last three years, as returned by the Company :—

	£
1864–65	45,170
1865–66	45,652
1866–67	45,464
Average of the three years	£45,429

Dividend on Ordinary Shares :—

	£	*s.*	*d.*	
1864-65	3	10	0	per cent.
1865–66	4	5	0	,,
1866–67	4	0	0	,,

Interest (average rate on the 30th of June 1867) :—

On Debentures	4	15	3	,,
On Debenture Stock	4*l.* and 4	5	0	,,

This railway connects the Dublin and Drogheda with the Ulster and the Ir North Western lines, and forms the main route from Dublin to Belfast and to the No of Ireland.

The district of country which may be considered to be accommodated by the l embraces an area of 293,511 acres, with a population of 153,579 persons.

8 & 9 Vict. c. 130.
13 Vict. c. 11.

THE LINE.

This line was authorized by an Act of 1845. The works progressed very slowly, a by an Act of 1850 an extension of seven years was given to complete them, and t Company received advances from the Public Works Loan Commissioners to the extent 75,000*l.*, at 5 per cent., which after the 20th of December 1850 was reduced to 4 p cent. per annum.

The following table shows the dates when the works were authorized, and the sever portions of the line opened for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
21 July 1845	Drogheda Old Terminus -	Dundalk - - -	22	5 Feb. 1849.
,,	Dundalk - - -	Wellington Junction -	10	— 1850.
,,	Armagh Road - -	Portadown - - -	17	5 June 1852.
,,	Wellington Junction -	Armagh Road - -	6	1 June 1852.
,,	Dublin and Drogheda Terminus.	Old Terminus across the Boyne.	1	4 April 1855.

Relations of the Dublin and Belfast with other Railway Companies.

The lines in connexion with the Dublin and Belfast Junction are stated in the followin table :—

Name of Railway.	Point of Junction.	Page of Report.
Line worked by Company.		
The Banbridge Junction - - -	Scarva - - - -	87
Other completed Lines.		
The Dublin and Drogheda - - -	Drogheda - - -	89
The Irish North Western - - -	Dundalk - - -	108
The Newry and Armagh - - -	Goragh Wood Junction - -	126
The Ulster - - - -	Portadown - - -	130

The Banbridge Junction Railway.

Dublin and Belfast Junction Railway.

This line is leased by the Dublin and Belfast Junction Company for 21 years from 20th of September 1857 at a rent of 2,000*l.* a year.

The Dublin and Drogheda Railway.

The Dublin and Belfast Junction Company use the station of the Dublin and Drogheda Company at Drogheda, at a rent of 1,000*l.* a year.

The Irish North Western Railway.

The Dublin and Belfast Junction has an identity of interest with the Irish North Western Company in the traffic to places between Dundalk and Omagh, but has a competing interest with that Company for traffic to places between Omagh and Londonderry, as such traffic must be brought to it at Portadown, by the Portadown, Dungannon, and Omagh Railway.

The Newry and Armagh Railway.

The line of this Company crosses the Dublin and Belfast Junction line at Goragh Wood Junction, giving a route to Armagh of 18 miles, the route from the same point to Armagh by the Dublin and Belfast Junction and Ulster Railways viâ Portadown being 29½ miles.

The Ulster Railway.

The Dublin and Belfast Junction Company use the Ulster Company's station at Portadown at a rent of 675*l.* a year.

The present agreement is for three years, from the 1st of July 1865.

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36. THE BANBRIDGE JUNCTION RAILWAY.

Banbridge Junction Railway.

Banbridge to Scarva.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
Banbridge to Scarva - - - - - - -	6¾	—	6¾

The line is worked and maintained by the Dublin and Belfast Junction Company.

CAPITAL.

Capital authorized:—	£
Shares - - - - - -	60,000
Borrowing Powers - - - -	20,000
Total - - - - -	£80,000

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:	£
Ordinary Shares - - - -	22,128
Preference Shares - - - -	17,800
Debentures - - - - -	17,250
Total Capital - - - -	£57,178

Floating liabilities, less floating assets - - - £184

Banbridge Junction Railway.

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	2,000
1865–66	2,000
1866–67	2,000
Average for three years	£2,000

Dividend on Ordinary Shares:—

1864–65	No dividend.
1865–66	2*l.* 10*s.* 0*d.* per cent.
1866–67	No dividend.

Dividend on Preference Shares:—

Average of three years ended the 30th of June 1867, 5*l.* 0*s.* 0*d.* per ce

Interest (average rate payable at the 30th of June 1867):—

On Debentures - - - - 4*l.* 10*s.* 11*d.* per cent.

This railway connects Banbridge with the Dublin and Belfast Junction line at Scar The district of country which may be considered to be accommodated by the l embraces an area of 25,786 acres, with a population of 10,754 persons.

THE LINE.

16 & 17 Vict. c. 208. 29 & 30 Vict. c. 304.

The line was made under an Act of 1853, the time for completing the works havi been extended in 1856 when the name of the Company was changed from the Banbrid Newry, Dublin, and Belfast Junction Company to that of Banbridge Junct Company.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
20 August 1853 -	Banbridge - -	Scarva - - -	Miles. 7	7 February 1859.

Relations of the Banbridge Junction with other Railway Companies.

The lines in connexion with the Banbridge Junction are stated in the followi table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed lines.		
The Dublin and Belfast Junction - - -	Scarva Junction - - -	85
The Banbridge, Lisburn, and Belfast - -	Banbridge - - - -	132

The Dublin and Belfast Junction Railway.

The Banbridge Junction Railway is leased to this Company under the Act of 185 for 21 years, from the 20th of September 1857, at a rent of 2,000*l.* a year.

The Banbridge, Lisburn, and Belfast Railway.

This line connects the Banbridge Junction with the Ulster Railway at Knockmo Junction.

37. THE DUBLIN AND DROGHEDA RAILWAY.

DUBLIN to DROGHEDA, with branches to Howth and Oldcastle.

LENGTH OF LINE.

MAIN LINE.	Single.	Double.	Total.
	Miles.	Miles.	Miles.
...IN to DROGHEDA	—	31¾	31¾
BRANCHES.			
The HOWTH BRANCH (from Howth Junction to Howth)	3½	—	3½
The OLDCASTLE BRANCH (from Drogheda to Oldcastle)	39½	—	39½
Total number of miles owned by the Company	43	31¾	74¾

Length of main line - 31¾ miles.
Length of branches - 43 „
Total length of main line and branches - 74¾ miles.

CAPITAL.

...apital authorized:—

	£
Shares	953,000
Borrowing Powers	317,333
Total	£1,270,333

...inancial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—	£
Ordinary shares	644,800
Preference shares	155,775
Guaranteed 4 per cent. stock, perpetual	94,225
Debentures	250,498
Debenture Stock	43,722
Loan Commissioners	2,870
Total Capital	£1,191,890

...loating liabilities, less floating assets - £12,920

...et revenue of each of the last three years, as returned by the Company:—

	£
1864–65	54,573
1865–66	56,003
1866–67	55,255
Average of three years	£55,277

...idend on Ordinary Shares:—

	£	s.	d.	
1864–65	4	5	0	per cent.
1865–66	4	15	0	„
1866–67	4	12	6	„

...idend on Preference Shares:—

Average of three years ended the 30th of June 1867 - 4 12 6 per cent.

...erest on guaranteed 4 per cent. Perpetual Stock:—

Average of three years ended the 30th of June 1867 - 4 0 0 per cent.

Dublin and Drogheda Railway.

Interest (average rate on the 30th of June 1867):—

On Debentures	4 10	3 per cent.
On Debenture Stock	4 0 0	,,

Interest paid to Loan Commissioners:—

Rate of Interest	4*l.* 0*s.* 0*d.* per cent.

The district of the country which may be considered to be accommodated by the embraces an area of 472,893 acres, with a population of 462,875 persons.

THE MAIN LINE.

Dublin to Drogheda.

(31¾ miles, double line.)

8 & 7 Will. 4, c. 132. 3 & 4 Vict. c. 106.

The main line was commenced under an Act of 1836, but the works proceeded slow and in 1840, before one-half of the capital was paid up, the Company obtained power borrow, from the Public Works Loan Commissioners, the sum of 150,000*l.*, with prior over all other mortgages and securities. The share capital of the Company at the sa time was reduced, two years extension was granted to purchase lands, and five ye to complete the line. The Company received from the Public Works Loan Comm sioners 156,000*l.* between the 16th of December 1842 and the 28th of February 1848

Par. Paper, 1867, No. 140

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
13 Aug. 1836	Dublin	Drogheda	32	June 1844.

THE BRANCHES.

(*a.*) *The Howth Branch.*

Howth Junction to Howth Harbour.

(3½ miles, single line.)

8 & 9 Vict. c. 128.

This Branch was made under an Act of 1845, and the following table shows wh the works were authorized and the several portions sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
21 July 1845	Howth Junction	First Terminus	2¾	23 July 1846.
,, ,,	First Terminus	Second Terminus	¾	May 1847.

(*b.*) *The Oldcastle Branch.*

Drogheda to Oldcastle.

(39½ miles, single line.)

8 & 9 Vict. c. 130. 10 & 11 Vict. c. 89.

The portion of this branch from Drogheda to Navan was granted to the Dublin an Belfast Junction Company; the right of making it was purchased by the Dublin an Drogheda Company under the provisions of an Act of 1847, and the works were execute by the latter Company.

From Navan to Kells was made under an Act of 1847, and from Kells to Oldcast under an Act of 1860.

Dublin and Drogheda Railway.

The following table shows the dates when the works were authorized and the several tions of the branch sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
uly 1845 - -	Drogheda - -	Navan - - -	17	Dec. 1849.
uly 1847 - -	Navan - - -	Kells - - -	9¾	8 July 1853.
uly 1860 - -	Kells - - -	Oldcastle - - -	12¾	14 March 1863.

Relations of the Dublin and Drogheda with other Railway Companies.

The lines in connexion with the Dublin and Drogheda Railway are stated in the owing table :—

Name of Railway.	Point of Junction.	Page of Report.
Completed Lines.		
Dublin and Belfast Junction - - -	Drogheda - - - - -	85
Dublin and Meath - - - - - -	Navan - - - - - -	92
Lines authorized but not commenced.		
Dublin Trunk Connecting - - -	Two points near Amiens Street Terminus, Dublin.	60
Navan and Kingscourt - - - - -	Navan - - - - - -	49

The Dublin and Belfast Junction Railway.

The Dublin and Belfast Junction Railway forms the connecting link between the main of the Dublin and Drogheda and the principal railways in the north and north-west reland. In 1847 Parliamentary powers were obtained to enable the Dublin and gheda, the Dublin and Belfast Junction, the Dundalk and Enniskillen (now the Irish th-western), and the Ulster companies, or any of them, to amalgamate, but these ers have not been exercised. 10 & 11 Vict. c. 100.

The Dublin and Belfast Junction Company uses the station of the Dublin and gheda Company at Drogheda at a rent of 1,000*l.* a year.

The Dublin and Meath Railway.

This line connects Navan with the Midland Great Western line at Clonsilla Junction. The Dublin and Meath Company uses the portion of the line between Navan and s and the Kells station of the Dublin and Drogheda Company, paying a rent of *l.* 15*s.* a year, and tolls as agreed for the traffic.

The Dublin Trunk Connecting.

This line, if made, would connect the Dublin and Drogheda with the Dublin and gstown, the Midland Great Western, and the Great Southern and Western Railways.

The Navan and Kingscourt Railway.

This line, when made, will form a continuation of the Dublin and Meath Railway for miles into a portion of country not directly supplied with railway accommodation.

Dublin and Meath Railway.

38. THE DUBLIN AND MEATH RAILWAY.

Clonsilla Junction to Navan, with Branch to Athboy.

LENGTH OF LINE.

	Single.	Double.	To
	Miles.	Miles.	Mi
MAIN LINE.			
Clonsilla Junction to Navan	23¼	—	2
BRANCH.			
(*a.*) The Athboy Branch (from Kilmessan Junction to Athboy)	12¼	—	1
Total number of Miles owned by the Company	35½	—	3

Length of main line - 23¼ miles.
Length of branch - 12¼ ,,
Total length of main line and branch - 35½ miles

CAPITAL.

Capital authorized:—

	£
Shares	390,000
Borrowing Powers	115,000
	£505,000

Financial position on the 30th of June, 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary shares	133,155
Preference shares	183,460
Debentures	101,494
Loan Commissioners	13,500
Total capital	£431,609

Floating liabilities, less floating assets - £50,953

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	4,784
1865–66	5,519
1866–67	3,844
Average of three years	£4,716

Dividend on Ordinary Shares:—
1864–65
1865–66
1866–67 - Nil.

Dividend on Preference Shares:—
Average of three years, ended the 30th of June 1867 Nil.

Interest, average rate on the 30th of June 1867:—
On Debentures - 5*l.* 0*s.* 0*d.* per cent.

Interest paid to Loan Commissioners:—
Rate of interest - 5*l.* 0*s.* 0*d.* per cent.

This Company connects a large part of the county of Meath with Dublin.
The district of country which may be considered to be accommodated by the li
embraces an area of 215,751 acres, with a population of 348,288 persons.

THE MAIN LINE.

Dublin and Meath Railway.

21 & 22 Vict. c. 119.

he main line was constructed under an Act of 1858.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
uly 1858 - -	Clonsilla Junction -	Navan - - -	Miles. 23	29 August 1862.

(*a.*) *The Athboy Branch.*

he branch was constructed under the Act of 1858.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
uly 1858 - -	Kilmessan Junction -	Athboy - - -	Miles. 12	26 February 1864.

The Relations of the Dublin and Meath with other Railway Companies.

he lines in connexion with the Dublin and Meath are stated in the following table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Lines.		
Midland Great Western - - - -	Clonsilla Junction - - -	118
Dublin and Drogheda - - - - -	Navan - - - - - -	89
Line authorized but not commenced.		
Navan and Kingscourt - - - - -	Navan - - - - -	49

The Midland Great Western Railway.

he traffic of the Dublin and Meath Company runs on the Midland Great Western between Clonsilla and Dublin. The terms are fixed by an award of July 1861, lified by a subsequent agreement with the Midland Great Western Company.

The Dublin and Drogheda Railway.

he Dublin and Meath Company uses the part of the Oldcastle Branch of the Dublin Drogheda line between Navan and Kells and the Kells Station, paying a rent of *l.* 15*s.* a year for the station, with tolls for the traffic as agreed.

The Navan and Kingscourt Railway.

his Railway will be a continuation of the Dublin and Meath line into a district country not hitherto supplied with railway accommodation.

Dublin, Wicklow, and Wexford Railway.

39. THE DUBLIN, WICKLOW, AND WEXFORD RAILWAY.

From DUBLIN to ENNISCORTHY, with branches to Dalkey, Wicklow, and Shillelagh, extension commenced but not completed, from Enniscorthy to Wexford, and bra authorized but not commenced between Ranelagh and Merrion.

LENGTH OF LINE.

	Single.	Double.	To
MAIN LINE.	Miles.	Miles.	Mi
DUBLIN to ENNISCORTHY	65½	12	7
BRANCHES.			
(*a.*) THE SHANGANAGH AND DALKEY BRANCH (from Shanganagh Junction to Dalkey).	4	–	
(*b.*) THE WICKLOW BRANCH (from Wicklow Junction to Wicklow)	½	–	
(*c.*) THE SHILLELAGH BRANCH (from Shillelagh Junction to Shillelagh)	16½	–	1
Total number of miles owned by the Company	86½	12	9
OTHER LINE WORKED BY THE COMPANY.			
DUBLIN and KINGSTOWN (from Dublin to Dalkey, including connecting line to passenger pier).	2¼	6	
Total mileage worked	88¾	18	106
EXTENSION COMMENCED BUT NOTCOMPLETED.			
(*d.*) THE WEXFORD EXTENSION (from Enniscorthy to Wexford)	15	–	15
BRANCH AUTHORIZED BUT NOT COMMENCED.			
(*e.*) THE KINGSTOWN CONNECTING BRANCH (from Ranelagh to Merrion)	2	–	2
Total mileage authorized	105¾	18	123

Length of main line	77½ miles.	
Length of branches	21	,,
Total length of main line and branches	98½ miles.	
Length of railway worked and maintained but not owned by the Company	8¼	,,
Total mileage worked	106¾	,,
Length of extension commenced but not completed	15	,,
Length of branch authorized but not commenced	2	,,
Total mileage authorized	123¾	,,

CAPITAL.

Capital authorized:—	£
Shares	1,460,000
Borrowing Powers	480,932
Total	£1,940,932

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:	£
Ordinary Shares	510,000
Preference Shares	705,030
Debentures	234,581
Loan Commissioners	219,324
Total Capital	£1,668,935
Floating liabilities, less floating assets	£138,267

Dublin Wicklow, and Wexford Railway.

t revenue of each of the last three years, as returned by the Company :—

	£
1864–65	59,972
1865–66	71,785
1866–67	64,635
Average of the three years	£65,464

vidend on Ordinary Shares :—

1864–65	4*l.* 10*s.* 0*d.* per cent.
1865–66	4*l.* 0*s.* 0*d.* ,,
1866–67	Nil.

vidend on Preference Shares :—

Average of three years ended the 30th of June 1867, 5*l.* 6*s.* 8*d.* per cent.

terest (average on the 30th of June 1867) :—

On Debentures - - - 4*l.* 16*s.* 11*d.* per cent.

terest paid to Loan Commissioners :—

Rate of interest - - - 4*l.* 16*s.* 2*d.* per cent.

his Company was incorporated in 1846 as the Waterford, Wexford, Wicklow, and in Railway Company; in 1851 its name was changed to the Dublin and Wicklow way Company, and in 1860 to the Dublin, Wicklow, and Wexford Railway Company. he original plan was a very extensive one for connecting Waterford with Wexford, ow, Kingstown, and Dublin.

1848 the South Wales Railway Company agreed to subscribe for 250,000*l.* with a to appoint a majority of the directors of the Waterford, Wicklow, and Wexford Dublin Company. 11,200 original 20*l.* shares, or 224,000*l.*, were allotted to that pany, who paid upon them 33,000*l.*; in January 1852 the South Wales Company their shares for 10,000*l.*

1851 all the provisions for making the portion of the railway south of Wicklow repealed.

he district of country which may be considered to be accommodated by the line aces an area of 996,658 acres, with a population of 570,209 persons.

THE MAIN LINE.

Dublin to Enniscorthy.

(77½ miles; 12 double line and 65½ single line.)

he main line from Dublin to Dundrum was partly made by the Dublin, Dundrum, Rathfarnham Railway Company, afterwards called the Dublin and Bray Company, r an Act of 1846. The Dublin and Bray Company was unable to complete the s, although the time was extended in 1851, and it was ultimately finished by Dublin, Wicklow, and Wexford Company, with which the Dublin and Bray pany was incorporated. 9 & 10 Vict. c. 199. 14 & 15 Vict. c. 107. 20 & 21 Vict. c. 29.

he main line from Dundrum to Wicklow was made under the Company's original Act 46, the time for completing it having been extended in 1851 to the 24th of July 1865. he extension from the old to the new terminus in Dublin was made under the Act 857, the extension from Wicklow to Gorey under that of 1859, and the extension Gorey to Enniscorthy under that of 1860. 9 & 10 Vict. c. 208. 14 & 15 Vict. c. 108. 20 & 21 Vict. c. 29. 22 & 23 Vict. c. 80. 23 & 24 Vict. c. 47.

he following table shews the dates when the works were authorized, and the several ons of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ly 1846 -	Dundrum - -	Bray - - -	9¼	25 July 1853.
,, - -	Dublin - - -	Dundrum - -	3½	6 July 1854.
,, - -	Bray - - -	Wicklow Junction -	15½	26 Oct. 1855.
y 1857 - -	New Terminus, Dublin	Old Terminus, Dublin	¼	2 Feb. 1859.
g. 1859 -	Wicklow Junction -	Rathdrum - -	8½	17 Aug. 1861.
,, - -	Rathdrum - -	Newbridge - -	6¾	16 July 1863.
,, - -	Newbridge -	Gorey - - -	16¾	12 Nov. 1863.
ay 1860 - -	Gorey - - -	Enniscorthy - -	18	12 Nov. 1863.

Dublin, Wicklow, and Wexford Railway.

(*a.*) *The Shanganagh and Dalkey Branch.*

Dalkey to Shanganagh Junction.

(4 miles, single line.)

9 & 10 Vict. c. 213. 9 & 10 Vict. c. 208.

In 1846 the Dublin and Kingstown Company was authorized to make this tinuation of the Dalkey Branch, but under an Act of the same session the Du Wicklow, and Wexford Company purchased the Dublin and Kingstown Company's r and powers, and it has since completed the Railway.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
16 July 1846 - -	Dalkey - - -	Shanganagh Junction	Miles. 4	6 July 1854.

(*b.*) *The Wicklow Branch.*

Wicklow Junction to Wicklow.

($\frac{1}{2}$ a mile, single line.)

9 & 10 Vict. c. 208. 14 & 15 Vict. c. 108.

This branch, connecting the town and harbour of Wicklow with the main line, made under the Company's original Act, with certain deviations authorized in 1851.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
16 July 1846 - -	Wicklow Junction -	Wicklow - -	Miles. $\frac{1}{2}$	26 Oct. 1855.

(*c.*) *The Shillelagh Branch.*

Shillelagh Junction to Shillelagh.

($16\frac{1}{2}$ miles; single line.)

26 & 27 Vict. c. 86.

This branch was made under an Act of 1863, and plans have been lodged in the pre session of Parliament for a station at Shillelagh.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
22 June 1863 - -	Shillelagh Junction -	Shillelagh - -	Miles. $16\frac{3}{4}$	18 May 1865.

EXTENSION COMMENCED BUT NOT COMPLETED.

(*d.*) *The Wexford Extension.*

Enniscorthy to Wexford.

(15 miles.)

The extension was authorized in 1864, and was partly made; the time for the c pulsory purchase of land for the rest of the branch expired in June 1867, but Company has applied in its Bill of the present session for revival of its power extension of time.

BRANCH AUTHORIZED BUT NOT COMMENCED.

(e.) *The Kingstown connecting Branch.*

Ranelagh to Merrion.

(2 miles.)

is branch, when made, will connect the Dublin, Wicklow, and Wexford line, at lagh, with the Dublin and Kingstown line near Merrion, and will thus give Kingstown access to the Harcourt Street Station, and to the authorized central station of the in and Rathmines, &c. line, and if the Dublin and Rathmines, &c., and Dublin opolitan Junction lines be made, it will form a connexion also with the Great Southern Western line. It was authorized in 1865, and the time for compulsory purchase of will expire in July 1868. No part of the land has been taken, but the Company applied in its Bill of the present session for an extension of time for the purchase e land and for completing the works. 28 & 29 Vict. c. 222.

TIONS OF THE DUBLIN, WICKLOW, AND WEXFORD WITH OTHER RAILWAY COMPANIES.

e lines in connexion with the Dublin, Wicklow, and Wexford Railway are stated following table:—

Name of Railway.	Point of Junction.	Page of Report.
Line worked.		
ublin and Kingstown - -	Dalkey - - - - - -	98
es authorized but not commenced.		
ublin Metropolitan Junction -	Harcourt Street Station - -	45
Vaterford and Wexford - -	Wexford - - - - -	53
Vaterford, New Ross, and Wexford	Ballyhoge Junction - - -	67
ray and Enniskerry - -	Bray - - - - - -	42

The Dublin and Kingstown Railway.

e Dublin, Wicklow, and Wexford, under powers in their original Act, have leased Dublin and Kingstown line. The particulars of the leases and agreements between wo companies are herein-after noticed (p. 100).

The Dublin Metropolitan Junction Railway.

is line, when made, will connect the main line of the Dublin, Wicklow, and Wexford pany with the authorized Dublin and Rathmines line, and with the central station in in, and will also connect it with the Great Southern and Western line.

The Waterford and Wexford Railway.

is line when made will connect the Wexford Extension of the Dublin, Wicklow, and ford Company, with Ballyhack Ferry, opposite proposed Waterford and Passage

The Waterford, New Ross, and Wexford Railway.

e Ballyhoge Branch of this line, if made, would connect the Wexford Extension of Dublin, Wicklow, and Wexford line with the Waterford, New Ross, and Wexford orized line at Ballywilliam.

The Bray and Enniskerry Railway.

e Dublin, Wicklow, and Wexford Railway is empowered to subscribe 15,000*l.* to undertaking.

Dublin and Kingstown Railway.

40. THE DUBLIN AND KINGSTOWN RAILWAY.

DUBLIN to KINGSTOWN, with branch to Dalkey.

LENGTH OF LINE.

	Single.	Double.
	Miles.	Miles.
MAIN LINE.		
DUBLIN to KINGSTOWN - - - - - - - -	—	6
BRANCH.		
(*a.*) The DALKEY BRANCH (from Kingstown to Dalkey) including connecting line to Carlisle pier.	2¼	—
Total number of miles owned by the Company - -	2¼	6

Length of main line - - - - - 6 miles.
Length of branch - - - - - - 2¼ „
Total length of main line and branch - - - 8¼ mile

The line is leased to, and maintained and worked by, the Dublin, Wicklow, and W ford Company.

CAPITAL.

Capital authorized:—

	£
Shares - - - - - -	350,000
Borrowing Powers - - - -	110,000
Total - - - -	£460,000

Financial position on the 31st of August, 1867, as ascertained by the Commission

Capital raised by the Company:—

	£
Ordinary shares - - - -	350,000
Debenture Stock - - - -	70,000
Total capital - - -	£420,000
Cr. Floating assets, less floating liabilities - - -	£7,935

Net revenue of each of the last three years from Company's accounts:—

	£
1865 - - - - - -	32,233
1866 - - - - - -	36,759
1867 - - - - - -	34,765
Average of three years - -	£34,586

Dividend on Ordinary Shares:—

	£	*s.*	*d.*	
1865 - - - - -	9	0	0	per cent.
1866 - - - - -	10	0	0	„
1867 - - - - -	9	5	0	„

Interest (average rate on the 30th of June 1867):—
On Debenture Stock - - - 4*l.* 0*s.* 0*d.* per cent.

This was the first passenger railway authorized in Ireland which was carried to successful issue. The Company applied for its first Act in 1830, but so distrust was Parliament of railway enterprise before the Liverpool and Manchester Railway w completed, that the Bill was thrown out, and it was not until the next session, 1831, t it was passed.

1 & 2 Wm. 4. c. 69.

The line for six miles, cost upwards of 60,000*l.* per mile, and like the earlier lines England, was at first laid down with stone blocks, since replaced by wooden sleepers.

The gauge of the line at first was 4 feet 8½ inches, but upon the line being leased the Dublin, Wicklow, and Wexford Company it was altered, at the cost of that Compan to the uniform gauge of 5 feet 3 inches, established for Ireland.

9 & 10 Vict. c. 57.

The district of country which may be considered to be accommodated by the li embraces an area of 6,312 acres, with a population of 312,142 persons.

THE MAIN LINE.

Dublin and Kingstown Railway.

1 & 2 Wm. 4. c. 69.

4 & 5 Wm. 4. c. 27.

ıe main line, as far as the western pier of Kingstown Harbour, was made under the of 1831. The extension to the present terminus under that of 1834. The Company ved loans from the Commissioners of Public Works in Ireland of 75,000*l.* in 1832, of 37,200*l.* in 1836.

he following table shows the dates when the works were authorized, and the several ions of the line opened for traffic :—

Date of Act.	Date of opening of Line.*			
	From	To	Distance.	Date.
			Miles.	
tember 1831 -	Dublin - -	Western Pier, Kingstown.	5½	17 December 1834.
ay 1834 - -	Western Pier, Kingstown.	Present Terminus, Kingstown.	½	May 1837.

(*a.*) *The Dalkey Branch.*

9 & 10 Vict. c. 213.

his branch was made by the Dublin, Wicklow, and Wexford Company under the Act 846, the Dublin and Kingstown Company having transferred their powers of making that Company in 1847. The Dublin and Kingstown Company at the same time sferred to them a lease from the Harbour Commissioners of Kingstown of the site of branch railway to the old terminus at Dalkey, which was worked on the atmospheric cipie. The Dublin, Wicklow, and Wexford Company afterwards obtained a new lease n the Harbour Commissioners for a long term, and in 1856 leased the entire branch, ar as the present terminus at Dalkey, to the Dublin and Kingstown Company, at a inal rent for 99 years, from the 25th of March 1856. By an Act of 1866, the lease for years was converted into a lease for 980 years, subject to be reduced to the original n of 99 years at the election of the Dublin, Wicklow, and Wexford Company, if a peting line of railway or tramway should be established between Dublin and Kingsn. The branch is included in the sub-lease of the entire line by the Dublin and gstown Company to the Dublin, Wicklow, and Wexford Company.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1846 - -	Kingstown - -	Dalkey - -	2	10 October 1853.

Relations of the Dublin and Kingstown with other Railway Companies.

The lines in connexion with the Dublin and Kingstown, are stated in the following ble :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Line.		
Dublin, Wicklow, and Wexford - -	Dalkey - - -	94
Line commenced but not completed.		
Dublin Trunk Connecting - - -	Near Westland Row Terminus in Dublin.	60
Line authorized but not commenced.		
Kingstown Connecting Branch, of the Dublin, Wicklow, and Wexford.	Near Merrion - - -	94

This line was not sanctioned by the Board of Trade, having been opened before the formation of the ilway Department.

Dublin and Kingstown Railway.

The Dublin, Wicklow, and Wexford Railway.

In 1856 this Company took a lease of the entire Dublin and Kingstown line, for years, at a rent of 32,000*l.* subject to be increased under certain contingencies. 1859, the lease was modified, and in 1866 it was extended to 980 years, and rent increased to 36,000*l.* subject to the contingency of the parties being restored to t original position if a competing line of railway or tramway was established betw Dublin and Kingstown.

The changes made in 1866 in the lease arose from the Dublin, Wicklow, and W ford Company obtaining authority to construct the Kingstown Connecting Branch (fr the Kingstown line near Merrion, to the Wicklow line near Harcourt Street Statio which was expected to divert part of the Dublin and Kingstown traffic.

The Dublin Trunk Connecting Railway.

This railway, if made, would connect the Dublin and Kingstown with the Dublin a Drogheda, Midland Great Western, and Great Southern and Western Railways.

Great Southern and Western Railway.

41. THE GREAT SOUTHERN AND WESTERN RAILWAY.

DUBLIN to CORK, with branches to Kilkenny, Athlone, Parsonstown, Birdhill, Fermo Tralee, Youghal, and Queenstown.

LENGTH OF LINE.

	Single.	Double.	Total.
MAIN LINE.	Miles.	Miles.	Miles.
DUBLIN to CORK	—	165½	165½
BRANCHES.			
(*a.*) THE KILKENNY BRANCH (from Kildare Junction to Lavistown Junction)	25	23½	48½
(*b.*) THE ATHLONE BRANCH (from Portarlington to Athlone)	39	—	39
(*c.*) THE PARSONSTOWN BRANCH (from the Roscrea Junction to Parsonstown)	22¼	—	22¼
(*d.*) THE BIRDHILL BRANCH (from Roscrea to Birdhill)	32¼	—	32¼
(*e.*) THE FERMOY BRANCH (from Mallow to Fermoy)	16¾	—	16¾
(*f.*) THE TRALEE BRANCH (from Mallow to Tralee)	62	—	62
(*g.*) THE YOUGHAL BRANCH (from Cork to Youghal)	25½	1¼	26¾
(*h.*) THE QUEENSTOWN BRANCH (from the Queenstown Junction to Queenstown)	5¾	—	5¾
Total number of miles owned by the Company	228½	190¼	418¾
LINE WORKED BY THE COMPANY.			
CORK AND LIMERICK DIRECT (from Charleville to Foynes Junction)	17¼	—	17¼
Total mileage worked by the Company	245¾	190¼	436

Length of main line	165½ miles.
Length of branches	253¼ „
Total length of main line and branches	418¾ miles.
Length of railway worked but not owned by the Company	17¼ „
Total mileage worked and maintained	436 „

CAPITAL.

Capital authorized :—

	£
Shares	5,709,940
Borrowing Powers	630,965
Total	£6,340,905

nancial position on the 30th of June, 1867, as ascertained by the Commission :—

Capital raised by the Company :—	£
Ordinary Shares	4,107,980
Preference Shares	1,329,100
Debentures	484,672
Debenture Stock	500
Loan Commissioners	77,597
Total Capital	£5,999,849

ting liabilities, less floating assets - £82,286

revenue of each of the last three years, as returned by the Company :—

1865	248,829*l.*
1866	269,886*l.*
1867	272,294*l.*
Average of three years	263,669*l.*

dend on Ordinary Shares :—

1864–65	4*l.* 10*s.* 0*d.* per cent.
1865–66	5*l.* 0*s.* 0*d.* ,,
1866–67	4*l.* 15*s.* 0*d.* ,,

dend on Preference Shares :—

Average of the three years ended the 30th of June 1867, 4*l.* 0*s.* 0*d.* per cent.

terest (average on the 30th of June 1867) :—

On Debentures	4*l.* 8*s.* 1*d.* per cent.
On Debenture Stock	4*l.* 0*s.* 0*d.* per cent.
terest paid to Loan Commissioners	4*l.* 0*s.* 0*d.* per cent.

he Great Southern and Western Railway is the largest railway system in Ireland, esenting in length about one-fourth of the whole of the Irish railways, and in nue 28 per cent. of their total receipts. The district of the country which may be idered to be accommodated by the line embraces an area of 4,030,112 acres, with pulation of 1,293,824 persons.

THE MAIN LINE.

Dublin to Cork.

(165½ miles, double line.)

7 & 8 Vict. c. 100. 8 & 9 Vict. c. 24. 9 & 10 Vict. c. 196.

he main line from the Kingsbridge terminus in Dublin to Thurles was constructed r the Company's first Act, which was passed in 1844. The extension from Thurles ork under an Act of 1845, and the extension at Cork to the present terminus under ct of 1846.

he works of the line were rapidly executed after the Acts of Parliament were ined, and the following table shows the dates when the works were authorized and several portions of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
;. 1844	Dublin	Monasterevin	32½	July 1846.
	Monasterevin	Maryborough	20	June 1847.
	Maryborough	Ballybroughy	17	Aug. 1847.
	Ballybroughy	Thurles	19	Feb. 1848.
ly 1845	Thurles	Ballykisteen	20	5 July 1848.
	Ballykisteen	Mallow	37½	6 Aug. 1849.
	Mallow	Kilbarry	19	25 Oct. 1849.
ly 1846	Kilbarry	Quay at Cork	1¼	21 Nov. 1855.

Great Southern and Western Railway.

Branches.

(*a.*) *The Kilkenny Branch.*

Kildare Junction to Kilkenny.

(48½ miles; 25 miles single, 23½ double.)

7 & 8 Vict. c. 100. This branch from Kildare Junction to Carlow was constructed by the Great South and Western Company under its first Act of 1844.

7 W. 4. & 1 Vict. c. 104. A line from Dublin to Kilkenny by Carlow had been sanctioned as early as 1837, and construction entrusted to the Great Leinster and Munster Company, but that Co pany, although it obtained renewed powers in 1841, was unable to carry out the projec The extension from Carlow to the junction with the Waterford and Kilkenny line n Kilkenny was constructed by the Irish South Eastern Company under the powers

9 & 10 Vict. c. 200. an Act of 1846, and was worked independently by that Company until 1863, when it w incorporated with the Great Southern and Western Company.

The following table shows the dates when the works were authorized, and the seve portions of the branch sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
6 August 1844 - -	Near Monasterevin -	Carlow - -	23½	July 1846.
16 July 1846 - -	Carlow - -	Bagenalstown -	10	24 July 1848.
" "	Bagnalstown -	Junction with Waterford and Kilkenny.	12½	December 1850.
" "	Junction with Waterford and Kilkenny.	Kilkenny - -	1¾	Not stated.

(*b.*) *The Athlone Branch.*

Portarlington to Athlone.

(39 miles, single line.)

10 & 11 Vict. c. 93. 15 Vict. c. 24. 20 & 21 Vict. c. 15. This branch from Portarlington to Tullamore was constructed under an Act of 184 the powers conferred by which were revived in 1852. The extension to Athlone w made under an Act of 1857.

The following table shows the dates when the works were authorized, and the sever portions of the branch sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
2 July 1847 - -	Portarlington -	Tullamore - -	15¼	2 October 1854.
27 July 1857 - -	Tullamore - -	Athlone - -	24	5 October 1859.

(*c.*) *The Parsonstown Branch.*

Roscrea Junction to Parsonstown.

(22¼ miles, single line.)

16 & 17 Vict. c. 113. This branch was authorized in 1853 to be made by a separate Company, with powe to amalgamate with or sell to the Great Southern and Western Company. In 1855 th

hority to make the line under the above powers was transferred to the Great Southern Western Company, who completed it. Great Southern and Western Railway.

The following table shows the dates when the works were authorized, and the several tions of the branch sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ug. 1853	Roscrea Junction	Roscrea	10	13 October 1857.
„	Roscrea	Parsonstown	12	2 March 1858.

(*d.*) *The Birdhill Branch.*

Roscrea to Birdhill.

(32¼ miles, single line.)

This branch was made under an Act of 1861, and the following table shows the dates en the works were authorized, and the several portions sanctioned for traffic:— 24 & 25 Vict. c. 147.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1861	Roscrea	Nenagh	18½	1 Oct. 1863.
„	Nenagh	Birdhill	13	21 Mar. 1864.

(*e.*) *The Fermoy Branch.*

Mallow to Fermoy.

(16¾ miles, single line.)

This line was constructed under the authority of an Act of Parliament obtained by independent Company in 1854; but in 1857 the Company was dissolved and its vers were transferred to the Great Southern and Western. 17 & 18 Vict. c. 142. 20 & 21 Vict. c. 62.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1857	Mallow	Fermoy	17	11 May 1860.

(*f.*) *The Tralee Branch.*

Mallow to Killarney and Tralee.

(62 miles, single line.)

The portion of this branch from Mallow to Killarney (39 miles) was made under an t obtained by the Killarney Junction Company in 1846. 9 & 10 Vict. c. 200.

The works proceeded slowly until 1851, when an Act was passed to sanction a re-ngement of the capital, and to enable the Company to borrow money on the security of onies in the counties of Cork and Kerry. In 1854 the Killarney Junction Company s incorporated with the Great Southern and Western Railway, and power was given release the baronies from their guarantee.

Great Southern and Western Railway.

The portion of this branch from Killarney to Tralee (22 miles) was made under Act of 1853, obtained by the Tralee and Killarney Company.

In 1857 the Company was authorized to exercise the whole of their borrowing powe before their share capital had been fully subscribed, and a loan of 50,000*l.* was grante by Government for the purposes of the undertaking.

16 & 17 Vict. c. 189.

In 1859 the Company was incorporated with the Great Southern and Western Com pany, and the time for the completion of the line was extended.

20 & 21 Vict. c. 17.

22 Vict. c 10.

The following table shows the dates when the works were authorized, and the sever portions of the branch sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From.	To.	Distance.	Date.
			Miles.	
16 July 1846 - -	Mallow -	Freemount - -	28½	23 May 1853.
,, - -	Headfort - -	Killarney - -	7¼	17 June 1853.
,, - -	Freemount - -	Headfort - -	4½	15 July 1853.
15 Aug. 1853 - -	Killarney - -	Tralee - -	22	18 July 1859.

(*g.*) *The Youghal Branch.*

Cork to Youghal.

(26¾ miles ; 1¼ double line, and 25½ single line.)

8 & 19 Vict. . 101.

9 & 20 Vict. . 33.

9 & 30 Vict. 124.

9 & 30 Vict. 144.

This branch was constructed under an Act of 1846 In 1866 the affairs of the Company were wound up and the Company dissolved, and in the same year the Great Southern and Western were authorized to purchase the line for 310,000*l.* of the paid-up stock of that Company.

The following table shows the dates when the works were authorized, and the several portions of the branch line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
—— 1846 - -	Dunkettle - -	Middleton - -	9¼	15 November 1859.
,, - -	Middleton - -	Killeagh - -	7½	7 March 1860.
,, - -	Killeagh - -	Youghal - -	6½	24 May 1860.
,, - -	Tivoli - -	Dunkettle - -	2	3 October 1860.
23 June 1856 -	Bruin Lodge -	Tivoli - -	1½	2 January 1862.

(*h*). *The Queenstown Branch.*

Queenstown Junction to Queenstown.

(5¾ miles, single line.)

This branch was constructed under the Act of 1855.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
2 July 1855 - -	Queenstown Junction	Queenstown - -	5¾	12 March 1862.

ATIONS OF THE GREAT SOUTHERN AND WESTERN WITH OTHER RAILWAY AND CANAL COMPANIES.

Great Southern and Western Railway.

he lines in connexion with the Great Southern and Western are stated in the following :—

Name of Railway Company.	Points of Junction.	Page of Report.
Line worked by the Company.		
Cork and Limerick Direct	Charleville Junction	106
Completed Lines.		
Limerick and Castleconnell	Birdhill	143
Midland Great Western	Athlone and Clara	118
Waterford and Kilkenny	Kilkenny Branch near Kilkenny	136
Kilkenny Junction	Kilkenny and Maryborough	138
Waterford and Limerick	Limerick Junction	140
Lines commenced but not completed.		
Dublin Trunk	Kingsbridge Terminus	60
Midland Counties and Shannon Junction	Clara	63
Parsonstown and Portumna Bridge	Parsonstown	65
Southern of Ireland	Thurles	66
Waterford, New Ross, and Wexford	Bagenalstown	67
Lines authorized but not commenced.		
Central of Ireland	Maryborough and Geashill	43
Dublin Metropolitan	Kingsbridge Terminus	45
Waterford, Lismore, and Fermoy	Fermoy	51

The Cork and Limerick Direct Railway.

is line connects Limerick (53¼ miles distant) and the intervening districts with the of Cork. The line is worked by the Great Southern and Western at 40 per cent. of oss receipts.

The Limerick and Castleconnell (with Killaloe Extension) Railway.

is line connects the Birdhill Branch of the Great Southern and Western Railway Limerick. The distance from Limerick to Roscrea Junction by Birdhill is 57½ miles, he distance by the Limerick Junction of the Waterford and Limerick line is niles.

The Midland Great Western Railway.

e route by this line from Athlone to Dublin is 78¼ miles; that by the Great ern and Western is 80¾ miles. The route from Clara to Dublin by the Midland Western line is 69 miles, and by the Great Southern and Western 65 miles. etition by the two companies between Athlone and Dublin is regulated by the Southern and Western Railway (Athlone Extension) Act, 1857, s. 15.

The Waterford and Kilkenny Railway.

is line connects the Great Southern and Western line with Waterford and the south of Kilkenny.

The Kilkenny Junction Railway.

is is a continuation of the Waterford and Kilkenny line to Maryborough, where s the Great Southern and Western.

The Waterford and Limerick Railway.

e portion of this line between Limerick and Limerick Junction was originally part only direct connexion between Limerick and Dublin. The Great Southern and rn Company had powers to make this portion of the line in case the Waterford and ick Company failed to do so, and has running powers over it which it does not se. The Birdhill Branch now gives the Great Southern and Western line a

9 & 10 Vict. c. 196.

Great Southern and Western Railway.

shorter route from Dublin to Limerick, whereby a larger portion of their own line utilized, but the Limerick and Castleconnell line being worked by the Limerick a Waterford Company, the time of the trains by Birdhill is so fixed that it takes an h less time to go by Limerick Junction than by Birdhill.

The Dublin Trunk Connecting Railway.

This line includes amongst its objects that of connecting the Great Southern a Western with the Kingstown line and with the harbour of Dublin.

The Midland Counties and Shannon Junction Railway.

This line will join the Great Southern and Western at Clara, and will connect it wi the Shannon and form part of a route from the Shannon to Dublin.

The Parsonstown and Portumna Bridge Railway.

This line will continue the Parsonstown Branch to the Shannon at Portumna Bridg The Great Southern and Western Company has authority to subscribe 13,000*l.* this undertaking, and has done so to the extent of 1,000*l.*

The Southern Railway.

This line, from Clonmel to Thurles, will give the traffic from Clonmel and part South Tipperary a much shorter route to Dublin, by cutting off the angle formed by t Limerick Junction.

The Waterford, New Ross, and Wexford Railway.

This Company has purchased the Bagenalstown and Wexford line which, until it w closed in 1863, had been worked by the Great Southern and Western Company.

The Central Ireland Railways.

This line will run from Maryborough to Mullingar. It is a continuation of the K kenny Junction Railway, and it will join the Great Southern and Western Line at Mar borough, and cross the Athlone Branch at Geashill.

The Dublin Metropolitan Junction Railway.

This line, when made, will connect the Great Southern and Western Railway wi the central station in Dublin on the authorized Dublin and Rathmines, &c. line, and al by the authorized Kingstown connecting branch of the Dublin and Wicklow, &c. wi the Kingstown line.

The Waterford, Lismore, and Fermoy Railway.

This line will join the Great Southern and Western Railway at Fermoy. Th Company has power to make working arrangements with the Great Southern and Weste Company.

Cork and Limerick Direct Railway.

42. THE CORK AND LIMERICK DIRECT RAILWAY.

From the GREAT SOUTHERN AND WESTERN LINE near Charleville to the LIMERICK AND FOYNES LINE near Patrick's Well.

LENGTH OF LINE.

	Single.	Double.	Tota
	Miles.		Miles
CHARLEVILLE JUNCTION to PATRICK'S WELL JUNCTION - - -	17¼	—	17¼

The line is worked and maintained by the Great Southern and Western Company.

CAPITAL.

	£
pital authorized :—	
Shares	105,000
Borrowing Powers	33,000
Total	£138,000

nancial position on the 30th of June, as ascertained by the Commission :—

Capital raised by the Company :—	£
Ordinary Shares	71,375
Preference Shares	11,782
Debentures	33,000
Total Capital	£116,157

loating liabilities, less floating assets £3,796

et revenue of each of the last three years, as returned by the Company :—

	£
1864–65	3,522
1865–66	4,243
1866–67	4,900
Average for three years	£4,222

ividend on Ordinary Shares :—

1864–65	1*l.* 15*s.* 0*d.* per cent.
1865–66	2*l.* 5*s.* 0*d.* „
1866–67	3*l.* 0*s.* 0*d.* „

ividend on Preference Shares 5*l.* 0*s.* 0*d.* per cent.
terest (average rate on the 30th of June 1867) on Debentures 5*l.* 5*s.* 1*d.* per cent.
his railway establishes direct communication between Cork and Limerick.
he district of country which may be considered to be accommodated by the line races an area of 99,024 acres, with a population of 73,082 persons.

THE LINE.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
y 1860	Charleville Junction	Patrick's Well Junction.	16¾	28 July 1862.
„	Branch into Limerick		½	30 April 1863.

Relations of the Cork and Limerick Direct with other Railway Companies.

he lines in connexion with the Cork and Limerick Direct Railway are stated in the wing table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Great Southern and Western	Near Charleville	100
Limerick and Foynes	Foynes Junction and Limerick	146
Waterford and Limerick	Limerick	140

The Great Southern and Western Railway.

he Great Southern and Western Company works the Cork and Limerick Direct line 0 per cent. of the gross receipts.

Cork and Limerick Direct Railway.

The Limerick and Foynes Railway.

The Cork and Limerick Direct Company pays the Limerick and Foynes Comp 1,400*l.* a year for the use of its line from Patrick's Well Junction to Limerick.

The Waterford and Limerick Railway.

The Cork and Limerick Direct Company pays a rent of 432*l.* 10*s.* a year for the of the Limerick terminus of the Waterford and Limerick Railway.

Irish North-western Railway.

43. THE IRISH NORTH-WESTERN RAILWAY.

DUNDALK to ENNISKILLEN, with branches to Cootehill, and from Clones to Cavan.

LENGTH OF LINE.

	Single.	Double.	Tota
MAIN LINE.	Miles.	Miles.	Miles
DUNDALK to ENNISKILLEN	63	—	63
BRANCHES.			
(*a.*) THE COOTEHILL BRANCH (from Shantonagh Junction to Cootehill)	8	—	8
(*b.*) THE CLONES AND CAVAN BRANCH (from Clones to Cavan)	15¼	—	15¼
Total number of miles owned by the Company	86¼	—	86¼
LINES WORKED BY THE COMPANY.			
THE ENNISKILLEN, BUNDORAN, AND SLIGO	35½	—	35½
THE FINN VALLEY	13¼	—	13¼
THE LONDONDERRY AND ENNISKILLEN	50¼	9¾	60
Total number of miles worked	185¼	9¾	195

Length of main line	63 miles.
Length of branches	23¼ „
Total length of main line and branches	86¼ miles.
Length of railways worked and maintained by the Company	108¾ „
Total mileage worked	195

CAPITAL.

Capital authorized:—	£
Shares	900,000
Borrowing Powers	300,000
Total	£1,200,000

Financial position on the 30th of June 1867, as ascertained by the Commission:-

Capital raised by the Company:—	£
Ordinary Shares	171,420
Special Clones and Cavan Shares	27,887
Preference Shares	507,367
Debentures	169,616
Debenture Stock	57,318
Loan Commissioners	62,398
Total Capital	£996,006
Floating liabilities, less floating assets	£15,836

Irish North-Western Railway.

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	15,183
1865–66	16,033
1866–67	21,210
Average for three years	£17,475

Dividend on Ordinary Shares:—
1864–65, 1865–66, 1866–67 - Nil.

Dividend on Preference Shares:—
Average of three years, ended the 30th of June 1867 - Nil.

Interest (average rate payable at the 30th of June 1867):—
On Debentures - 5*l.* 9*s.* 8*d.* per cent.
On Debenture Stock - 5*l.* 0*s.* 0*d.* „

Interest paid to Loan Commissioners:—
Rate of Interest - 4*l.* 0*s.* 0*d.* per cent.

This railway connects the town of Enniskillen and the Londonderry and Enniskillen with the Dublin and Belfast Junction line at Dundalk, with the Ulster line at Clones, with the Midland Great Western line at Cavan.

The district of country which may be considered to be accommodated by the line traces an area of 725,280 acres, with a population of 255,180 persons.

THE MAIN LINE.

Dundalk to Enniskillen.

(63 miles, single line.)

The main line to Castleblaney was constructed under the Act of 1845, and to Ballybay under the same Act, the time having been extended in 1850. The line from Ballybay to Enniskillen was constructed under an Act of 1852, the time for the part between Newbliss and Enniskillen having been extended in 1857. 8 & 9 Vict. c. 96. 13 & 14 Vict. c. 76. 15 & 16 Vict. c. 41. 20 & 21 Vict. c. 104.

The following table shews when the works were authorized, and the several portions of the line sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1845 -	Dundalk - -	Castleblaney -	20	10 February 1849.
„ „ -	Castleblaney -	Ballybay - -	6¾	11 August 1854.
1852 -	Ballybay - -	Newbliss - -	10	16 August 1855.
„ -	Newbliss - -	Lisnaskea - -	16½	7 July 1858.
„ -	Lisnaskea - -	Lisbellaw - -	6	16 August 1858.
„ -	Lisbellaw - -	Enniskillen - -	4¾	14 February 1859.

BRANCHES.

(*a.*) *The Cootehill Branch.*

Shantonagh Junction to Cootehill.

(8 miles, single line.)

This branch, part of the original Cavan branch of the Company, was constructed under an Act of 1855. 18 & 19 Vict. c. 105.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1855 - -	Shantonagh Junction	Cootehill - -	7½	18 October 1860.

Irish North Western Railway.

(*b.*) *The Clones and Cavan Branch.*

Clones to Cavan.

(15¼ miles, single line.)

22 & 23 Vict. c. 51.

This branch was constructed under an Act of 1859, under the name of Clones a Cavan Extension, and the Ulster Company subscribed 27,887*l.* to the undertaking.

Special accounts are kept for this branch and it is managed by special board meetin at which a director appointed by the Ulster Company can attend.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
1 August 1859 - -	Clones - -	Cavan - -	Miles. 15	28 March 1862.

Relations of the Irish North Western with other Railway Companies.

The lines in connexion with the Irish North Western are stated in the followin table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Lines worked by the Irish North Western.		
The Londonderry and Enniskillen - - -	Enniskillen - - - -	114
The Enniskillen, Bundoran, and Sligo - -	Bundoran Junction - - -	111
The Finn Valley - - - - - - -	Strabane - - - - -	112
Other completed Lines.		
The Dublin and Belfast Junction - - -	Dundalk - - - - -	85
The Ulster - - - - - - - -	Clones - - - - -	130
The Midland Great Western - - - -	Cavan - - - - -	118
Line authorized but not commenced.		
The Dundalk and Greenore - - - -	Dundalk - - - - -	47

The Londonderry and Enniskillen Railway.

The Irish North Western Company has leased this line in perpetuity at a minimum rent of 26,000*l.* for 35 years, subject to be raised to a maximum of 33,000*l.* a year.

The Enniskillen, Bundoran, and Sligo Railway.

The Irish North Western Company works this line for 2*s.* per train mile.

The Finn Valley Railway.

The Irish North Western Company works this line for 35 per cent. of the gross receipts, the Finn Valley Company paying land charges, and a rent for the use of Strabane station of 375*l.* per annum.

The Dublin and Belfast Junction Railway.

Under Parliamentary authority this Company subscribed 30,000*l.* for ordinary capital and 20,000*l.* for third-class preference shares in the Clones and Cavan Extension. The Dublin and Drogheda Company subscribing a like amount.

The Ulster Railway.

This Company subscribed, under the Act of 1859, 30,000*l.* for special Clones and Cavan Extension shares, and has entered into agreements with the Irish North Western Company for the use of the Omagh station of the Portadown, Dungannon, and Omagh Railway, leased to the Ulster Company.

The Midland Great Western Railway.

Irish North Western Railway.

he Cavan branch of this line joins the Clones and Cavan branch of the Irish North tern line at Cavan.

The Dundalk and Greenore Railway.

y an Act of 1867 the Irish North Western Company is authorized to make traffic ngements with the Dundalk and Greenore Company. 30 & 31 Vict. c. 183.

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44. THE ENNISKILLEN, BUNDORAN, AND SLIGO RAILWAY.

Enniskillen, Bundoran, and Sligo Railway.

m the Londonderry and Enniskillen Line to Bundoran, with authorized Extension to Sligo.

LENGTH OF LINE.

	Single.	Double.	Total.
oran Junction to Bundoran	Miles. 35½	Miles. —	Miles. 35½
Total completed and owned	35½	—	35½
AUTHORIZED EXTENSION.			
The Sligo Extension (from Bundoran to Sligo)	—	—	23
Total number of miles authorized	—	—	58½

Length of line - - - - 35½ miles.
Length of extension authorized - - - 23 „
Total mileage authorized - - 58½ miles.

he line is worked and maintained by the Irish North Western Company.

CAPITAL.

apital authorized:—

	£
Shares	450,000
Borrowing Powers	149,900
Total	£599,900

inancial position on the 30th of September 1867, as ascertained by the Commission:—
Capital raised by the Company:—

	£
Ordinary Shares	45,714
Preference Shares	100,000
Debentures	85,400
Total Capital	£231,114
loating liabilities, less floating assets	£198,411

Net revenue since the opening of the line, from Company's accounts:—

	£
1865–66 (from 15th June 1866)	499
1866–67	1,915
Average	£1,862
Dividend on Ordinary Shares	Nil.
Dividend on Preference Shares:—	Nil.

nterest (average rate payable at the 30th of June 1867):—
On Debentures - - - - 5*l.* 0*s.* 0*d.* per cent.

Enniskillen, Bundoran, and Sligo Railway.

The line connects Bundoran (a sea bathing place), and a portion of the county Donegal, with the Irish North Western system of railways, near Enniskillen.

The district of country which may be considered to be accommodated by the li embraces an area of 314,396 acres, with a population of 73,900 persons.

THE LINE.

24 & 25 Vict. c. 138.

The line to Bundoran was authorized in 1861.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
11 July 1861 - -	Bundoran Junction -	Bundoran - -	Miles. $35\frac{1}{2}$	28 March 1866.

(*a.*) *The Sligo Extension.*

Bundoran to Sligo (23 miles).

25 & 26 Vict. c. 114. 28 Vict. c. 113.

This extension was authorized in 1862; but no land has been taken nor any capita expended on the works. In 1865 the time for completing the works was extended to th 19th of June 1868.

Relations of the Enniskillen, Bundoran, and Sligo with other Railway Companies.

The lines in connexion with the Enniskillen, Bundoran, and Sligo are stated in th following table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Lines.		
The Londonderry and Enniskillen (worked by the Irish North Western).	Bundoran Junction - -	114
The Midland Great Western - - - - -	Sligo - - - - -	118

The Londonderry and Enniskillen Railway (worked by the Irish North Western Railway Company).

The Enniskillen, Bundoran, and Sligo Railway joins the Londonderry and Enniskille line about ten miles from Enniskillen. The Irish North Western Company work and maintains the line for 2*s.* per train mile.

The Midland Great Western Railway.

The Sligo Extension of the Enniskillen, Bundoran, and Sligo Railway will, if com pleted, join the Sligo branch of the Midland Great Western Railway at Sligo.

Finn Valley Railway.

45. THE FINN VALLEY RAILWAY.

Strabane to Stranorlar.

LENGTH OF LINE.

	Single.	Double.	Total.
Strabane to Stranorlar - - - - - -	Miles. $13\frac{1}{4}$	Miles. —	Miles. $13\frac{1}{4}$

This line is worked and maintained by the Irish North Western Company.

CAPITAL.

Capital authorized:—

	£
Shares	60,000
Borrowing Powers	20,000
Total	£80,000

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares	47,705
Preference Shares	2,120
Loan Commissioners	20,000
Total Capital	£69,825

Floating liabilities, less floating assets - £7,058

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	2,025
1865–66	1,940
1866–67	2,086
Average for three years	£2,017

Dividend on Ordinary Shares:—

1864–65
1865–66
1866–67 } Nil.

Dividend on Preference Shares:—

Average of three years ended the 30th of June 1867 - 6*l.* 0*s.* 0*d.* per cent.

Interest paid to Loan Commissioners:—

Rate of interest - 5*l.* 0*s.* 0*d.* per cent.

This line connects Stranorlar and part of the county of Donegal with the Londonderry and Enniskillen line at Strabane.

The district of country which may be considered to be accommodated by the line traces an area of 198,375 acres, with a population of 70,639 persons.

THE LINE.

The line was authorized in 1860. 23 Vict. c. 40.

Date of Act.	Length sanctioned by Board of Trade with Date of Sanction.			
	From	To	Distance.	Date.
May 1860	Strabane	Stranorlar	Miles. 13	20 August 1863.

Relations of the Finn Valley with other Railway Companies.

Name of Railway Company.	Point of Junction.	Page of Report.
Londonderry and Enniskillen (leased to the Irish North Western).	Strabane	114

The Irish North Western Railway.

Under an agreement of the 25th of June 1862 the Irish North Western Company works the Finn Valley line for 10 years, from the 1st of November 1862, for 35 per cent. of the gross receipts, the Finn Valley Company paying all rates, rents, taxes, and land charges, and 375*l.* per annum for the use of Strabane station.

Londonderry and Enniskillen Railway.

46. THE LONDONDERRY AND ENNISKILLEN RAILWAY.

LONDONDERRY to ENNISKILLEN.

LENGTH OF LINE.

—	Single.	Double.	Total.
MAIN LINE.	Miles.	Miles.	Miles.
LONDONDERRY to ENNISKILLEN	49¼	9¾	59
BRANCH (WORKED BY HORSE-POWER).			
(*a.*) The FINTONA BRANCH (From Fintona Junction to Fintona).	1	—	1
Total number of miles worked and maintained by the Company	50¼	9¾	60

Length of main line - - - - 59 miles.
Length of branch - - - - 1 „
Total number of miles worked and maintained - 60 miles.

This line is leased to the Irish North Western Company.

CAPITAL.

Capital authorized:—

	£
Shares	455,000
Borrowing Powers	150,000
Total	£605,000

Financial position on the 30th June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares	129,200
Preference Shares	325,800
Debentures	76,000
Debenture Stock	46,070
Loan Commissioners	17,059
Total Capital	£594,129

Floating liabilities, less floating assets - - - £70,185

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	24,664
1865–66	25,223
1866–67	25,097
Average for three years	£24,995

Dividend on Ordinary Shares:—

1864–65
1865–66
1866–67 } - - - - - - Nil.

Dividend on Preference Shares:—

Average of three years ended the 30th of June 1867, 5*l.* 9*s.* 9*d.* per cent (including payment on account of arrears of preference dividends).

Interest (average rate payable at the 30th of June 1867):—

On Debentures - - - - 5*l.* 2*s.* 0*d.* per cent.

On Debenture Stock - - - - { 4*l.* 5*s.* 0*d.* per cent. / 4*l.* 10*s.* 0*d.* per cent. / 5*l.* 0*s.* 0*d.* per cent.

Interest paid to Loan Commissioners:—

Rate of Interest - - - - 4*l.* 0*s.* 0*d.* per cent.

his railway connects the towns of Enniskillen, Omagh, and Strabane with the city port of Londonderry, and forms part of the route from Londonderry to Dublin. he district of country which may be considered to be accommodated by the line races an area of 577,525 acres, with a population of 158,906 persons. Londonderry and Enniskillen Railway.

THE MAIN LINE.

Londonderry to Enniskillen.

(49¼ miles single line, and 9¾ double line.)

he main line from Londonderry to Strabane was constructed under an Act of 1845, Strabane to Omagh under an Act of 1850, and from Omagh to Enniskillen under Act of 1852. 8 & 9 Vict. c. 98. 13 Vict. c. 14. 15 Vict. c. 44.

he following table shews the dates when the works were sanctioned, and the several ions of the line were opened for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ly 1845 - -	Londonderry -	Strabane - -	14	March 1847.
ust 1846 -	Old Terminus near Londonderry.	New Terminus in Londonderry.	¾	15 April 1850.
y 1850 - -	Strabane - -	Newtown Stewart -	9½	6 February 1852.
„ -	Newtown Stewart -	Omagh - -	9¼	13 September 1852.
y 1852 - -	Omagh - -	Fintona Junction -	6½	16 June 1853.
„ -	Fintona Junction -	Dromore Road -	5¾	18 January 1854.
„ -	Dromore Road -	Enniskillen - -	13¼	31 July 1854.

(*a.*) *The Fintona Branch.*

Fintona Junction to Fintona.

(1 mile, single line.)

his branch was constructed under an Act of 1854, and is worked by horse-power. 17 & 18 Vict. c. 135.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
uly 1854 -	Fintona Junction -	Fintona - -	1	Not stated.

Relations of the Londonderry and Enniskillen with other Railway Companies.

he lines in connexion with the Londonderry and Enniskillen are stated in the owing table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Irish North Western - - -	Enniskillen - - - -	108
Enniskillen, Bundoran, and Sligo - -	Bundoran Junction - -	111
Portadown, Dungannon, and Omagh (leased the Ulster Company).	Omagh - - - -	134
Finn Valley - - - - -	Strabane - - - -	112

The Irish North Western Railway.

he Irish North Western Company work and maintain the Londonderry and iskillen line under a perpetual lease renewable every thirty-five years for a minimum of 26,000*l.* a year, subject to be increased, on certain contingencies, to a maximum 33,000*l.* a year.

Londonderry and Enniskillen Railway.

The Enniskillen, Bundoran, and Sligo Railway.

This line joins the Londonderry and Enniskillen railway near Lowtherstown.

The Portadown, Dungannon, and Omagh Railway (leased to the Ulster Company)

This railway joins the Londonderry and Enniskillen line at Omagh. The use of Omagh station of the Omagh Market branch and of the station of the Portado Dungannon, and Omagh Railway, is arranged between the Ulster and the Irish No Western Companies.

The Finn Valley Railway.

This line connects Stranorlar and part of the county of Donegal with the Londonde and Enniskillen line at Strabane.

Londonderry and Lough Swilly Railway.

47. THE LONDONDERRY AND LOUGH SWILLY RAILWAY.

LONDONDERRY to BUNCRANA, with branch to Farland.

LENGTH OF LINE.

	Single.	Double.	Tota
MAIN LINE.	Miles.	Miles.	Miles
LONDONDERRY to BUNCRANA	12½	—	12½
BRANCH.			
(*a.*) THE FARLAND BRANCH (from Junction with Main Line to Farland)	2¼	—	2¼
Total number of miles owned by the Company	14¾	—	14¾

Length of main line - 12½ miles.
Length of branch - 2¼ "
Total length of main line and branch - —14¾ miles.

CAPITAL.

Capital authorized:—

	£
Shares	105,000
Borrowing Powers	26,200
Total	£131,200

Financial position on the 30th June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares	34,459
Debentures	6,600
Loan Commissioners	13,000
Total capital	£54,059
Floating liabilities, less floating assets	£53,502

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	158
1865–66	1,116
1866–67	1,148
Average of three years	£807

Londonderry and Lough Swilly Railway.

ividend on Ordinary Shares :—

1864–65 } 1865–66 } 1866–67 }	Nil.

terest (average rate on the 30th of June 1867) :—

On Debentures	6*l.* per cent.

oan Commissioners :—

Rate of Interest	5*l.* per cent.

his railway connects Buncrana and a portion of the county of Donegal with the city ondonderry.

he powers for making a more convenient station at Londonderry have expired, but the and Harbour Commissioners are making a tramway along the quays to connect the ent railways having termini in Londonderry, which, when completed, will facilitate nterchange of traffic between them.

ne district of country which may be considered to be accommodated by the line aces an area of 207,839 acres, with a population of 69,258 persons.

THE MAIN LINE.

ne main line, as far as the junction with the Farland Branch, was constructed under Act of 1853, certain deviations having been authorized by an Act of 1859, it completed under an Act of 1861. 16 & 17 Vict. c. 54. 22 & 23 Vict. c. 50. 24 & 25 Vict. c. 161.

ne following table shews the dates when the works were authorized and the several ons of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ne 1853 - -	Londonderry -	Junction with Farland Branch.	6½	12 Nov. 1863.
y 1861 - -	Junction with Farland Branch.	Buncrana - -	6	9 Sept. 1864.

(*a.*) *The Farland Branch.*

From Junction with Main Line to Farland.

(2¼ miles, single line.)

his branch was constructed under the Act of 1853, with the deviations authorized ne Act of 1859.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ne 1853 -	Junction with Main Line. Trains ceased to run since July 1866.	Farland - -	2¼	12 Nov. 1863.

LATIONS OF THE LONDONDERRY AND LOUGH SWILLY WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report.
etterkenny - - - -	Near Farland - - - -	

ne authorized Letterkenny line will be an extension of the Farland Branch of the londerry and Lough Swilly to Letterkenny, in the county of Donegal.

Midland Great Western Railway.

48. THE MIDLAND GREAT WESTERN RAILWAY.

DUBLIN to GALWAY, with branches to North Wall Quay, Dublin, Sligo, Cavan, and Cl

LENGTH OF LINE.

	Single.	Double.	T ota
MAIN LINE.	Miles.	Miles.	Mile
DUBLIN to GALWAY - - - - - - - - -	29¼	97½	126
BRANCHES.			
(*a.*) The LIFFEY BRANCH (from Liffey Junction to North Wall Quay, Dublin)	–	3	3
(*b.*) The SLIGO BRANCH (from Mullingar to Sligo) - - - -	69¼	15¼	84½
(*c.*) The CAVAN BRANCH (from Cavan Junction to Cavan) - - -	25	–	25
(*d.*) The CLARA BRANCH (from near Streamstown to Clara) - - -	7½	–	7½
Total number of miles owned by the Company - -	131	115½	246½
OTHER LINES WORKED AND MAINTAINED BY THE COMPANY:—			
The ATHENRY and TUAM (from Athenry to Tuam) - - -	15¼	–	15¼
The GREAT NORTHERN and WESTERN (from Athlone to Westport) -	82¾	–	82¾
Total mileage worked and maintained by the Company - -	229	115½	344½

Length of main line - - - - 126½ miles.
Length of branches - - - - 120 „
Total length of main line and branches - 246½ miles.
Length of railway worked and maintained but not owned by the Company - - 98 „
Total mileage worked and maintained - 344½ miles.

CAPITAL.

Capital authorized:—

	£
Shares - - - -	2,750,000
Borrowing Powers - - -	1,286,076
Total - - -	4,036,076

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares - - - -	2,157,175
Preference Shares - - - -	180,572
Debentures - - - - -	698,811
Royal Canal Mortgage - - - -	135,861
Loan Commissioners - - - -	448,016
Total Capital - - -	£3,620,435

Floating liabilities, less floating assets - - - £31,442

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–5 - - - - -	110,333
1865–6 - - - - -	120,421
1866–7 - - - - -	120,880
Average of three years - -	£117,211

Dividends on Ordinary Shares:—

1864–65 - - - -	2*l.* 2*s.* 6*d.* per cent.
1865–66 - - - -	2*l.* 10*s.* 0*d.* „
1866–67 - - - -	2*l.* 10*s.* 0*d.* „

Dividend on Preference Shares:—
Average of three years ending the 30th of June 1867, 5*l.* per cent.

Interest (average rate on the 30th of June 1867):—
On Debentures - - - - 4*l.* 9*s.* 4*d.* per cent.
Loan Commissioners - - - 3*l.* 10*s.* 0*d.* per cent.

The district of the country which may be considered to be accommodated by the line traces an area of 2,818,273 acres, with a population of 981,328 persons.

The Midland Great Western Company under its first Act purchased the Royal Canal, and a considerable portion of the railway between Dublin and Mullingar was constructed on land acquired by that purchase. The Railway Company became responsible to keep the canal open for traffic at the Parliamentary rates of toll. Further particulars are given in the part of the Report relating to canals (p. 163).

THE MAIN LINE.

Dublin to Galway.

(126½ miles; 29¼ single line, 97¼ double line.)

The main line from Dublin to Mullingar was authorized by an Act of 1845; from Mullingar to Athlone by an Act of 1846; and from Athlone to Galway by an Act of 1847, certain deviations having been sanctioned in 1847 and 1848. 8 & 9 Vict. c. 119. 9 & 10 Vict. c. 224.

The completion of the line from Mullingar to Galway was accelerated by an Act of 1849, which enabled the Company, with the approval of the Commissioners of Public Works, to enter at once upon possession of lands required for the railway on delivering certificate of value to the persons entitled to receive it. The satisfactory operation of this Act contributed to the passing of the general measure in 1851 (Railways, Ireland, Act, 1851), which has so much facilitated the making of railways in Ireland. 10 & 11 Vict. c. 176. 11 & 12 Vict. c. 76. 12 & 13 Vict. c. 62.

Under the Act of 1849 the Company was enabled to obtain loans from the Public Works Loan Commissioners to the extent of 500,000*l.* at 3½ per cent. to be charged in half-yearly sums of 1*l.* 15*s.* per cent. on a local tax on the lands and premises liable to county cess in the county of Galway, the county of the town of Galway, and in the baronies of Moycarne and Athlone in the county of Roscommon. The profits of this portion of the line to go in reductions of the tax, and if the profits exceed 3½ per cent. in any half year they are to be carried to the next half year. The Company was under obligation to pay off each advance at the rate of 1½ per cent. per annum, commencing at the end of 10 years from the date of its being made. The Company received advances from the Public Works Loan Commissioners amounting in all to 500,000*l.* at various dates between the 25th of October 1849 and the 29th of April 1852. 12 & 13 Vict. c. 62.

By an Act of 1854 the sum, on which the interest was chargeable on local taxes was fixed at 470,000*l.* By an Act of 1865, an arrangement was made between the Company and the inhabitants of the districts liable to the local tax, by which all arrears of charge on the local taxes should be paid up, and all liability for interest should cease on the 28th of October 1870. 17 & 18 Vict. c. 124. (Pub.) 28 & 29 Vict. c. 210.

The following table shows the dates when the works were authorized, and the several sections of the line sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
July 1845 - -	Dublin - -	Enfield - -	26½	June 1847.
" " - -	Enfield - -	Hill of Down -	9¼	October 1847.
" " - -	Hill of Down -	Mullingar - -	14½	27 Sept. 1848.
July 1846 - -	Mullingar - -	Athlone - -	28	31 July 1851.
July 1847 - -	Athlone - - -	Galway - -	48¼	31 July 1851.

Midland Great Western Railway.

THE BRANCHES.

(a.) *The Liffey Branch.*

Liffey Junction to North Wall Quay, Dublin.

(3 miles, double line.)

22 & 23 Vict. c. 53. 9 & 10 Vict. c. 210.

This branch was made under an Act of 1859. Powers to make it had been obtained in 1846; but they were not exercised.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
1 August 1859 -	Liffey Junction -	North Wall Quay, Dublin.	Miles. 3	9 Sept. 1864.

(b.) *The Sligo Branch.*

Mullingar to Sligo.

(84½ miles; 15¼ double line, 69¼ single line.)

8 & 9 Vict. c. 119.

The portion of this branch between Mullingar and Longford was included in the Company's first Act of 1845.

13 & 14 Vict. c. 88.

In 1848 the time for purchasing lands and completing the works was extended by the Railway Commissioners, and in 1850 a further extension of time was granted by Parliament. In 1852 deviations from the original line were sanctioned.

20 & 21 Vict. c. 77.

In 1857 the remaining portion of the Sligo Branch, from Longford to the town of Sligo, was sanctioned, with certain small connecting lines to Knockmuldoney Mills and to the Ballast Quay at Sligo.

The following table shews the dates when the works were authorized, and the several portions of the branch sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
21 July 1845 - -	Mullingar - -	Longford - -	Miles. 26	5 Nov. 1855.
27 July 1857 - -	Boyle - -	Sligo - -	28	1 Nov. 1862.
" " - -	Carrick - -	Boyle - -	8¼	7 Nov. 1862.
" " - -	Longford - -	Carrick - -	21¾	27 Nov. 1862.
" " - -	Old Terminus, Sligo -	New Terminus, Sligo	¼	Not stated.

(c.) *The Cavan Branch.*

From Cavan Junction to Cavan.

(25 miles, single line.)

5 & 16 Vict. 137.

This branch was made under an Act of 1852. It connects the Midland Great Western Railway, through the Cavan branch of the Irish North Western, with the railway systems of the North of Ireland.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
30 June 1852 - -	Junction with the Sligo Branch.	Cavan - -	Miles. 25	2 July 1856.

Midland Great Western Railway.

(*d.*) *The Clara Branch.*

From near Streamstown to Clara Junction.

(7½ miles, single line.)

This branch was made under an Act of 1857; it joins the Great Southern and Western at Clara, and is noticed in the part of the report on that Company (p. 105). 20 & 21 Vict. c. 113.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
August 1857 -	Streamstown - -	Clara - -	Miles. 7¼	24 Feb. 1863.

LATIONS OF THE MIDLAND GREAT WESTERN RAILWAY COMPANY WITH OTHER COMPANIES.

The lines in connexion with the Midland Great Western are:—

Name of Railway.	Points of Junction.	Page of Report.
nes worked by the Midland Great Western.		
Athenry and Tuam - - -	Athenry - - - - -	122
Great Northern and Western - -	Athlone - - - - -	124
Other completed Lines.		
Dublin and Meath - - -	Clonsilla - - - - -	92
Irish North Western - - -	Cavan - - - -	108
Great Southern and Western - -	Clara and Athlone - - -	100
Lines commenced but not completed.		
Athenry and Ennis - - -	Athenry - - - - -	55
Dublin Trunk Connecting - - -	Two points near Broadstone Terminus and one with the Liffey Branch.	60
Lines authorized but not commenced.		
Sligo and Ballaghaderreen -	Near Boyle - - - - -	50
Central of Ireland - - - -	Mullingar - - - - -	43
Sligo Extension of the Enniskillen, Bundoran and Sligo.	Sligo - - - - -	111

The Athenry and Tuam Railway.

This line connects the town of Tuam and a portion of the county of Galway with Midland Great Western line at Athenry, and is leased at 4,000*l.* a year to the Midland eat Western Company, which works and maintains it.

The Great Northern and Western Railway.

This line connects the counties of Roscommon and Mayo with the Midland Great stern line at Athlone, and is worked and maintained by the Midland Great Western mpany, for 1*s.* 6¾*d.* per train mile, between Athlone and Castlereagh; and for 2*s.* per n mile between Castlereagh and Westport.

Under authority of Acts of 1858, 1859, and 1861, the Midland Great Western Railway tributed 113,350*l.* to the Great Northern and Western Railway. 21 & 22 Vict. c. 94. 22 & 23 Vict. c. 53. 24 Vict. c. 67.

The Dublin and Meath Railway.

This line joins the Midland Great Western line at Clonsilla Junction, 7½ miles from blin, from which place the traffic of the Dublin and Meath Railway for Dublin runs the Midland Great Western line.

The terms are fixed by an award dated the 29th of July 1861, modified by a subsequent eement between the Companies.

Midland Great Western Railway.

The Irish North-Western Railway.

The Clones and Cavan branch of the Irish North-Western Company forms a junctio with the Cavan branch of the Midland Great Western at Cavan, and connects the Midla Great Western with the railways in the north and north-west of Ireland.

The Great Southern and Western Railway.

The junctions of this line at Athlone and Clara are described in the part of t report on the Great Southern and Western Company.

The Athenry and Ennis Railway.

This line, when completed, will establish a continuous railway communication fro Athenry, *viâ* Limerick, to Cork and Waterford.

The Dublin Trunk Connecting Railway.

This line, if made, will connect the Midland Great Western Railway with the Gre Southern and Western, the Dublin and Drogheda, and the Dublin and Kingstow Railways.

The Sligo and Ballaghaderreen Railway.

This line will form an extension of the Midland Great Western system.

The Central of Ireland Railway.

This line will form an extension of the Kilkenny Junction to Mullingar.

The Enniskillen, Bundoran, and Sligo Railway.

This line is complete as far as Bundoran. If extended to Sligo, it would establish continuous railway communication from Sligo, *viâ* Enniskillen and Dundalk, to Dublin.

The London and North-Western Railway.

24 & 25 Vict. c. 123.

The London and North-Western Railway Company, under an Act of 1861, has con structed premises for steamboat traffic adjoining the Liffey terminus, which are con nected by a branch railway with the Midland Great Western.

Athenry and Tuam Railway.

49. THE ATHENRY AND TUAM RAILWAY.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
ATHENRY to TUAM - - - - - - - - -	15¼	—	15¼

The line is worked and maintained by the Midland Great Western Company.

CAPITAL.

	£
Capital authorized:—	
Shares - - - - - -	90,000
Borrowing Powers - - - -	30,000
Total - - - -	£120,000

Athenry and Tuam Railway.

inancial position on the 29th of September 1867, as ascertained by the Commission :—

	£
Capital raised by the Company :—	
Ordinary Shares - - - -	61,018
Loan Commissioners - - - -	30,000
Total Capital - - -	£91,018
Cr. Floating assets, less floating liabilities - - -	£600

Net revenue of each of the last three years, as returned by the Company :—

	£
1865 - - - - - -	3,757
1866 - - - - - -	3,757
1867 - - - - - -	3,455
Average for the three years - -	£3,656

Dividend on Ordinary Shares :—

1865 - - - - -	3*l.* per cent.
1866 - - - - -	3*l.* ,,
1867 - - - - -	3*l.* ,,

Interest paid to Loan Commissioners :—

Rate of Interest - - - -	5*l.* per cent.

This railway connects the town of Tuam with Galway and Dublin.
The district of country which may be considered to be accommodated by the line braces an area of 262,972 acres, with a population of 57,864 persons.

THE LINE.

The line was constructed under an Act of 1858. 21 & 22 Vict. c. 112.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
July 1858 - -	Athenry - -	Tuam - -	Miles. 15½	25 Sept. 1860.

Relations of the Athenry and Tuam with other Railway Companies.

Name of Railway Company.	Point of Junction.	Page of Report.
e Midland Great Western - -	Athenry - - - -	118

The Midland Great Western Railway.

In 1859 the Athenry and Tuam Company entered into an agreement with the Mid-d Great Western Company to lease the line to them for 10 years from the completion the railway, at 4,000*l.* a year.
The Athenry and Tuam Company undertook, during the continuance of the lease, not extend its line beyond Tuam towards Castlebar, Westport, or Ballina, or to promote similar extensions by any other Company or persons.
This agreement was confirmed by statute in 1860, and the Companies were empowered 23 & 24 Vict. enter into a lease for 10 years. They were further empowered, with the sanction of c. 182. Board of Trade, to enter into a renewed lease for a further period not exceeding years. Power was also given for the sale of the railway to the Midland Great estern Company.

Great Northern and Western Railway.

50. THE GREAT NORTHERN AND WESTERN OF IRELAND RAILWAY

ATHLONE to MANULLA JUNCTION, near Castlebar, and thence to Westport and Ballina.

LENGTH OF LINE.

	Single.	Double.	Total.
MAIN LINE.	Miles.		Miles.
ATHLONE to WESTPORT	82¾	—	82¾
Total completed and working	82¾	—	82¾
BRANCH COMMENCED BUT NOT COMPLETED.			
(*a.*) The FOXFORD BRANCH (from Manulla Junction to Foxford)	—	—	11½
EXTENSION AUTHORIZED BUT NOT COMMENCED.			
(*b.*) The BALLINA BRANCH EXTENSION (from Foxford to Ballina)	—	—	9¼
(*c.*) The WESTPORT QUAY EXTENSION (from Westport to Westport Quay)	—	—	1¾
Total mileage authorized	—	—	105¼

Length of main line - 82¾ miles.
Length of branch, commenced but not completed - 11½ ,,
Length of extensions, authorized but not commenced - 11 ,,
Total length of main line, branch, and extensions authorized - 105¼ miles.

The line is worked and maintained by the Midland Great Western Company.

CAPITAL.

Capital authorized:—

	£
Shares	554,000
Borrowing Powers	184,000
Total	£738,000

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares	261,890
Shares held by Midland Great Western Company	113,315
Preference Shares	51,960
Loan Commissioners	134,000
Total Capital	£561,200

Floating liabilities, less floating assets - £67,001

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	14,780
1865–66	19,575
1866–67	22,436
Average for three years	£18,931

Dividend on Ordinary Shares:—

	£ s. d.	
1864–65	2 7 6	per cent.
1865–66	3 5 0	,,
1866–67	1 12 6*	,,

Dividend on Shares held by Midland Great Western Company:—

	£ s. d.	
1864–65	2 14 8	per cent.
1865–66	3 6 11	,,
1866–67	1 14 8	,,

* Though the balance of net receipts for the second half year of 1866–67 was sufficient for a dividend at the rate of 3*l.* 10*s.* per cent., no dividend was declared, but the sum was retained for the purpose of paying liabilities. If it had been declared it would make the average dividend for 1866–67, 3*l.* 7*s.* 6*d.* per cent.

Great Northern and Western Railway.

Dividend on Preference Shares :—
Average of three years ended the 30th of June 1867 - 5*l.* 0*s.* 2*d.* per cent.
Interest paid to Loan Commissioners :—
Rate of Interest - - - - - 4*l.* 3*s.* 1*d.* „

This railway connects Westport and Castlebar, and generally the counties of Mayo l Roscommon, with the Midland Great Western and the Great Southern and Western ilway systems.

The district of country which may be considered to be accommodated by the line braces an area of 1,251,014 acres, with a population of 296,237 persons.

THE MAIN LINE.

The main line as far as Castlereagh was constructed under an Act of Parliament sed in 1857; from Castlereagh to Castlebar under an Act passed in 1859, and from stlebar to Westport under an Act passed in 1861. 20 & 21 Vict. c. 84.

The following table shews the dates when the works were authorized, and the several tions of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, and Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
July 1857 - -	Athlone - -	Roscommon - -	18	10 Feb. 1860.
	Roscommon - -	Castlereagh - -	16½	14 Nov. 1860.
ug. 1859 - -	Castlereagh - -	Ballyhaunis - -	11½	24 Aug. 1861.
	Ballyhaunis - -	Claremorris - -	11¼	7 May 1862.
	Claremorris - -	Castlebar - -	14¾	12 Nov. 1862.
June 1861 - -	Castlebar - -	Westport - -	11	25 Jan. 1866.

Branch commenced but not completed.

(*a.*) *The Foxford Branch.*

Manulla Junction to Foxford.

(11½ miles.)

The line from Manulla Junction to Ballina has been completed to Foxford, with the eption of a bridge at that place, but it is not yet opened for traffic.

This line was originally authorized in 1862, but by a subsequent Act, passed in 1866, time for completion of the works was extended to the 16th of July 1869, after which iod the Company is liable to a penalty of 50*l.* per day until the branch shall be opened traffic. 25 & 26 Vict. c. 207. 29 & 30 Vict. c. 237.

Extensions authorized but not commenced.

(*b.*) *The Ballina Extension.*

From Foxford to Ballina.

(9¼ miles.)

The Company has now applied to the Board of Trade for leave to abandon the por- s of this line not yet commenced between Foxford and Ballina.

(*c.*) *The Westport Quay Extension.*

From Westport to Westport Quay.

(1¾ mile.)

This is part of the line authorized by the Act of 1861, but by a subsequent Act, ed in 1866, the time for its completion was extended to the 1st of July 1868, after ch date the Company is liable to a penalty of 50*l.* per day until the completion of the 24 & 25 Vict. c. 67. 29 & 30 Vict. c. 237.

The Company has now applied to the Board of Trade for leave to abandon this ension.

Great Northern and Western Railway.

RELATIONS OF THE GREAT NORTHERN AND WESTERN OF IRELAND WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report
The Midland Great Western - - -	Athlone - - - - -	118

The Midland Great Western Railway.

By provisions of the Acts passed in 1857, 1859, and 1861 the Great Northern and Western Company acquired powers to use the Athlone station of the Midland Great Western Railway Company, and also, with the approval of the Board of Trade, in case the Midland Great Western Company should at any time cease to work the Great Northern and Western Railway, to use that portion of the Midland Great Western Railway lying between the junctions of that line with the Great Northern and Western and with the Great Southern and Western Companies.

The Great Northern and Western is worked and maintained by the Midland Great Western Company under the following agreements, entered into (under Parliamentary powers) with that Company:—Agreement, dated the 1st of August 1859, to work and maintain that portion of the line between Athlone and Castlereagh for 10 years, at 1*s.* 6¾*d.* per train mile, and under a subsequent agreement to work and maintain the portion between Castlereagh and Westport, until the same period, at 2*s.* per train mile.

The Midland Great Western Company hold shares in the Great Northern and Western Company to the amount of 113,350*l.* which they are restrained from selling so long as the above-mentioned agreement of the 1st of August 1859 remains in force.

Newry and Armagh Railway.

51. THE NEWRY AND ARMAGH RAILWAY.

From NEWRY to ARMAGH.

LENGTH OF LINE.*

—	Single.	Double.	Total.
NEWRY to ARMAGH - - - -	Miles. 21	Miles. —	Miles. 21

CAPITAL.

Capital authorized:—	£
Shares - - - - - -	408,120
Borrowing powers - - - -	78,000
Total - - -	£486,120

Financial position on the 30th of June, 1867, as ascertained by the Commission:—

Capital raised by the Company:—	£
Ordinary Shares - - - -	46,965†
Preference Shares - - - -	101,116
Debentures - - - - -	78,000
Total capital - -	£226,081
Floating liabilities, less floating assets - - -	£277,252

* The Company is also joint proprietor with the Newry and Warrenpoint Company, of the town of Newry connecting line, three-quarters of a mile in length between the two lines in Newry.

† The shares were reduced to one-third the original amount by the Act of 1857.

Newry and Armagh Railway.

t revenue of each of the last three years, as returned by the Company :—

	£
1864–65	1,062
1865–66	2,288
1866–67	4,121
Average of three years	2,490

vidend on Ordinary Shares :—

1864–65 1865–66 1866–67	Nil.

terest on Debentures :—

Dividend on Preference Shares	Nil.
(Average rate on the 30th of July 1867*)	5*l.* per cent.

his railway connects the city of Armagh with the town and port of Newry. lso connects the town of Newry and the Newry and Warrenpoint line with the lin and Belfast Junction line at Goragh Wood Junction.

he district of country which may be considered to be accommodated by this line races an area of 100,635 acres, with a population of 64,501 persons.

THE LINE.

he line from Newry to Goragh Wood Junction was constructed under an Act of 1845, time for completing the works having been extended in 1847. From Goragh d Junction to Armagh under an Act of 1857. The name of the Company was ed in 1857 from the Newry and Enniskillen to the Newry and Armagh Company the powers for completing the line to Enniskillen had expired. The short connect- ine between the two lines at Newry was made under an Act of 1859.

8 & 9 Vict. c. 129.
10 & 11 Vict. c. 85.
20 & 21 Vict. c. 156.
22 & 23 Vict. c. 38.

receiver has been appointed by the Irish Court of Chancery, and a Bill is being pro- ed by creditors in the present session for authorizing the sale of the line by the lish Court of Chancery, and for the dissolution of the Company.

he following table shews when the works were authorized and the several portions ne line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ly 1845 - -	Edward Street Station, Newry.	Goragh Wood -	3½	7 January 1854.
gust 1853 -	Albert Basin, Newry	The Junction with the Town of Newry Connecting Line.	¼	3 August 1864.
ugust 1857 -	Goragh Wood -	Near Armagh -	17	10 August 1864.
„ -	Near Armagh -	Ulster Terminus -	¼	8 February 1865.

Relations of the Newry and Armagh with other Railway Companies.

he Companies in connexion with the Newry and Armagh Railway are stated in the wing table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Lines.		
Newry, Warrenpoint, and Rostrevor -	Newry - - - -	128
Dublin and Belfast Junction - -	Goragh Wood Junction - -	85
Ulster - - - - - -	Armagh - - - -	130
Line commenced but not completed.		
Newry and Greenore - - -	Newry - - - -	64

* The shares were reduced to one-third the original amount by the Act of 1857.

Newry and Armagh Railway.

The Newry, Warrenpoint, and Rostrevor Railway.

The town of Newry connecting line, from near the old terminus of the Newry Warrenpoint line to near the Edward Street station of the Newry and Armagh is the joint property of both companies and is managed by a joint committee.

The Dublin and Belfast Junction Railway.

This line forms a junction with the Newry and Armagh Railway at Goragh W and provision is made by the Act of 1857 for the junction being maintained.

The Ulster Railway.

The Newry and Armagh Company has a right under the Act of 1859 to use Armagh station of the Ulster Company, upon conditions to be settled by the Board Trade. It pays a rent of 634*l.* per annum for use of Armagh station and a portion the line, and 100*l.* for services at the junction.

The Newry and Greenore Railway.

This line will connect the Newry and Armagh Railway with the projected pier Greenore. Traffic arrangements between the Companies are authorized.

Newry, Warrenpoint, and Rostrevor Railway.

52. THE NEWRY, WARRENPOINT, AND ROSTREVOR RAILWAY

(with the Town of Newry Connecting Line).

NEWRY to WARRENPOINT.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
NEWRY to WARRENPOINT - - - - - - - -	5½	—	5½
Total owned by the Newry, Warrenpoint, and Rostrevor Company -	5½	—	5½
(*a.*) THE TOWN OF NEWRY CONNECTING LINE (from the line to the old terminus of Newry, Warrenpoint, and Rostrevor Railway to the Albert Basin line of the Newry and Armagh Railway).	¾	—	¾
Total joint property of Newry, Warrenpoint, and Rostrevor and Newry and Armagh Companies.	¾	—	¾

CAPITAL.

Capital authorized:—

	£
Shares - - - - - -	120,000
Borrowing Powers - - - -	39,933
Total - - - -	£159,933

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares - - - -	99,910
Preference Shares - - - -	20,000
Debentures - - - -	31,300
Loan Commissioners - - - -	8,400
Total Capital - - -	£159,610

Floating liabilities, less floating assets - - - - £3972

Newry, Warrenpoint, and Rostrevor Railway.

revenue of each of the last three years, as returned by the Company:—

	£
1864–65	3,108
1865–66	2,271
1866–67	3,467
Average of three years	£2,948

vidend on Ordinary Shares:—

1864–65, 1865–66, 1866–67 - Nil.

vidend on Preference Shares:—

Average of three years ended the 30th of June 1867 - Nil.

erest (average rate on the 30th of June 1867):—

On Debentures - 4*l.* 19*s.* 8*d.* per cent.

erest to Loan Commissioners - 5*l.* per cent.

is line connects Warrenpoint (a sea-bathing place and steamboat harbour) with y.

e district of country which may be considered to be accommodated by the line aces an area of 89,440 acres, with a population of 37,264 persons.

THE LINE.

e original line between Newry and Warrenpoint was constructed under an Act of 9 & 10 Vict. c. 245. The extension at Newry to the Dublin Bridge terminus and Warrenpoint basin made under an Act of 1857. The extension from the Dublin Bridge terminus 20 & 21 Vict. c. 61. e Newry and Armagh Railway was made under the Act of 1857, the time being ded by an Act of 1860. 23 Vict. c. 87.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
y 1846 - -	Warrenpoint -	Newry - -	Miles. 5¾	24 May 1849.

(*a.*) The Town of Newry Connecting Line.

om the line to the old terminus of the Newry, Warrenpoint, and Rostrevor Railway to Albert Basin line of the Newry and Armagh Railway.

(¾ mile, single line.)

is line was made by the Newry, Warrenpoint, and Rostrevor Company under the of 1857, but is the joint property of that Company and the Newry and Armagh pany.

e following table shews the dates when the works were authorized and the several ons of the line sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
y 1857 - -	Old Terminus, Newry	Dublin Bridge Station	Miles. ½	23 April 1861.
y 1857 - -	Dublin Bridge Station	Junction with Armagh Railway.	1¼*	20 August 1861.

* This includes a portion of the Newry and Armagh Railway sanctioned for passenger traffic.

Newry, Warrenpoint, and Rostrevor Railway.

RELATIONS OF THE NEWRY, WARRENPOINT, AND ROSTREVOR WITH OTHER RAILWAY COMPANIES.

Name of Railway Company.	Point of Junction.	Page of Report
The Newry and Armagh - - -	Newry - - - -	126

The Newry and Armagh Railway.

Under the Act of 1860 the Newry and Armagh Company contributed half the co the Newry Connecting line, upon which the Dublin Bridge station, used by both C panies, is situated. The town of Newry Connecting Line is managed by a commi of both Companies.

Ulster Railway.

53. THE ULSTER RAILWAY.

BELFAST to CLONES.

LENGTH OF LINE.

	Single.	Double.	Total
MAIN LINE.	Miles.	Miles.	Miles
BELFAST to CLONES - - - - - - - - -	16	48½	64½
Total number of miles owned by the Company - - -	16	48½	64½
LINES WORKED BY THE COMPANY.			
The BANBRIDGE, LISBURN, and BELFAST (from Banbridge to Knockmore Junction, near Lisburn).	15	—	15
The PORTADOWN, DUNGANNON, and OMAGH (from Portadown to Omagh) -	41	—	41
Total mileage worked and maintained by the Company -	72	48½	120½

Length of main line - - - - - 64½ miles.
Length of railway worked but not owned by the Company 56 „
Total mileage worked and maintained by the Company 120½ miles

CAPITAL.

Capital authorized:

	£
Shares - - - - - -	1,200,000
Borrowing Powers - - - - -	309,000
Total - - - - -	£1,509,000

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares - - - - -	1,000,000
Preference Shares - - - - -	89,235
Debentures - - - - -	233,885
Debenture Stock - - - - -	53,185
Total Capital - - - -	£1,376,305

Floating liabilities, less floating assets - - - £27,551

Net revenue of each of the last three years, from Company's accounts:—

	£
1864–65 - - - - - -	56,510
1865–66 - - - - - -	61,536
1866–67 - - - - - -	58,578
Average of three years - - -	£58,874

Ulster Railway.

	£	s.	d.	
vidend on Ordinary Shares :—				
1864–65	4	5	0	per cent.
1865–66	4	0	0	,,
1866–67	4	0	0	,,
ividend on Preference Shares	4	10	0	per cent.
terest (average rate on the 30th of June 1867) :—				
On Debentures	4	6	1	per cent.
On Debenture Stock	4	0	0	,,

his railway connects the counties of Monaghan and Armagh, and parts of Down Tyrone with the town and port of Belfast, and from Belfast to Portadown it forms of the direct route between Belfast and Dublin.

he district of country which may be considered to be accommodated by the line races an area of 369,899 acres, with a population of 310,796 persons.

THE LINE.

he line from Belfast to Portadown was constructed under an Act of 1836; from adown to Armagh under an Act of 1845 (the powers for making this portion given e Act of 1836 having been allowed to expire); from Armagh to Monaghan under ct of 1855; and from Monaghan to Clones under an Act of 1859.

6 W. 4. c. 33.
8 & 9 Vict. c. 114.
18 Vict. c. 53.
22 & 23 Vict. c. 41.

he line from Belfast to Portadown was at first laid down on a gauge of six feet two es, according to the recommendation in the Report of the Irish Railway Commissioners 38, but was altered to the gauge of five feet three inches, which had been adopted by Dublin and Drogheda Company, and afterwards established by Statute as the ral gauge for Ireland. Part of the cost of this alteration of gauge was borne by Dublin and Drogheda and Dublin and Belfast Junction Railway Companies.

he following table shows the dates when the works were authorized and the several ions of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.				
	From	To	Distance.	Date.	
			Miles.		
ay 1836 - -	Belfast - -	Lisburn - -	7½	Opened in 1839.*	
,, -	Lisburn - -	Portadown - -	17½	25 October 1841.	
ly 1845 - -	Portadown - -	Armagh - -	11	January 1848.	
ne 1855 - -	Armagh - -	Monaghan - -	16	June 1858.	
gust 1859 - -	Monaghan - -	Clones - -	13	21 February 1863.	

Relations of the Ulster with other Railway Companies.

he lines in connexion with the Ulster Company are stated in the following table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Lines worked by the Ulster.		
Banbridge, Lisburn, and Belfast - -	Knockmore Junction - -	130
Portadown, Dungannon, and Omagh Junc- n.	Portadown - -	134
Other completed Lines.		
Dublin and Belfast Junction - -	Portadown - - -	85
Irish North Western - - -	Clones - - - -	108
Newry and Armagh - - -	Armagh - - - -	126
Line commenced but not completed.		
Belfast Central - - - -	Near the Terminus and Goods Station of the Ulster Railway in Belfast.	57

* Opened in 1839 before the Railway Department of the Board of Trade was constituted.

Ulster Railway.

The Banbridge, Lisburn, and Belfast Railway.

This railway connects Banbridge and part of the county of Down with the Ulster Railway.

The Portadown, Dungannon, and Omagh Junction Railway.

This railway connects Omagh and Dungannon and parts of the counties of Armagh and Tyrone with the Ulster Railway.

The Dublin and Belfast Junction Railway.

This railway forms part of the main route between Dublin and the North of Ireland; there are statutable powers authorizing an amalgamation between it, the Ulster, the Dublin and Drogheda, and the Irish North Western Companies, which have never been exercised.

10 & 11 Vict. c. 100.

This Company uses the Portadown station of the Ulster Company under an agreement of the 1st of July 1865 for three years, at a rent of 675*l.* a year.

The Irish North Western Railway.

22 & 23 Vict. c. 51.

The Clones and Cavan branch of this Company connects the Ulster line with the Midland Great Western line at Cavan. The Ulster Company under an Act of 1859 subscribed 27,887*l.* to this branch.

The Newry and Armagh Railway.

This Company uses the Armagh station of the Ulster Company, and the line between that station and the junction, paying a rent of 634*l.* for use of Armagh station and portion of line, and 100*l.* for services at the junction.

The Belfast Central Railway.

This line, when completed, will be connected with the Ulster Railway near the terminus at Belfast; the Ulster Company has running powers over it to the proposed central station, upon terms to be settled by arbitration.

Banbridge, Lisburn, and Belfast Railway.

54. THE BANBRIDGE, LISBURN, AND BELFAST RAILWAY.

BANBRIDGE to KNOCKMORE JUNCTION near Lisburn.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.		Miles.
BANBRIDGE to KNOCKMORE JUNCTION - - - - - -	15	—	15

The line is worked and maintained by the Ulster Company.

CAPITAL.

Capital authorized:—	£
Shares - - - - - -	150,000
Borrowing Powers - - - -	49,000
Total - - - -	£199,000

Banbridge, Lisburn, and Belfast Railway.

Financial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :—	£
Ordinary Shares	87,969
Preference Shares	34,826
Debentures	49,000
Total Capital	£171,795
Floating liabilities, less floating assets	£25,648

Net revenue of each of the last three years, as returned by the Company :—

	£
1864–65	1,836
1865–66	2,330
1866–67	2,922
Average for three years	£2,363

Dividend on Ordinary Shares :—

1864–65
1865–66
1866–67 } Nil.

Dividend on Preference Shares :—

Average of three years ended the 30th of June 1867 - Nil.
Interest on Debentures - - - 5*l.* 1*s.* 3*d.* per cent.

This railway connects Banbridge with Belfast. The district of country which may be considered to be accommodated by the line embraces an area of 72,536 acres, with a population of 47,439 persons.

The line was constructed under an Act of 1858, with certain deviations authorized 1860. 21 Vict. c. 46. 23 Vict. c. 6.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
June 1858	Banbridge	Knockmore Junction	15	13 July 1863.

RELATIONS OF THE BANBRIDGE, LISBURN, AND BELFAST, WITH OTHER RAILWAY COMPANIES.

The lines in connexion with the Banbridge, Lisburn, and Belfast Railway are stated in the following table :—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Lines.		
ne Ulster	Knockmore Junction	130
he Banbridge Junction	Banbridge	87
Line Commenced but not Completed.		
ne Banbridge Extension	Banbridge	56

The Ulster Railway.

The Ulster Company subscribed 25,000*l.* to the Banbridge, Lisburn, and Belfast Company, under a Parliamentary provision that 4 per cent. interest on that amount should be a first charge against the Company.

Under an Act of 1862 the Ulster Company have power to lease the line for 21 years, upon the following scale. When the receipts for a half year amount to any sum not exceeding 3,000*l.*, 80 per cent. of receipts is paid to the Ulster Company for working 25 & 26 Vict. c. 105.

Banbridge, Lisburn, and Belfast Railway.

expenses, when receipts are 7,000*l.* and upwards only 45 per cent. is paid. For the intervening amounts the scale is, for 4,000*l.* 64 per cent., for 5,000*l.* 56 per cent., for 6,000*l.* 48 per cent., and for 6,500*l.* 46 per cent.

The Banbridge Junction Railway.

This is a short line of connexion between the Banbridge, Lisburn, and Belfast and the Dublin and Belfast Junction Railways.

The Banbridge Extension Railway.

The powers for completing the works of this line have expired.

Portadown, Dungannon, and Omagh Railway.

55. THE PORTADOWN, DUNGANNON, AND OMAGH JUNCTION RAILWAY.

PORTADOWN to OMAGH.

LENGTH OF LINE.

	Single.	Double.	Total.
PORTADOWN to OMAGH	Miles. 41	Miles. —	Miles. 41

This line is leased to and worked by the Ulster Company.

CAPITAL.

Capital authorized:—

	£
Shares	395,775
Borrowing Powers	131,385
Total	£527,160

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares	250,808
1st Preference Shares, 6 per cent. cumulative and redeemable	66,775
2nd Preference Shares, 4½ per cent. redeemable	48,032
Debentures	107,817
Loan Commissioners	16,768
Total capital	£490,200
Floating liabilities, less floating assets	£1,139

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	10,500
1865–66	10,500
1866–67	10,500
Average of three years	£10,500

Dividend on Ordinary Shares:—

1864–65, 1865–66, 1866–67	Nil.

)ividend on 1st Preference Shares:—
Average of three years ended the 30th of June 1867 - 6*l.* per cent.
:vidend on 2nd Preference Shares:—
Average of two years ended the 30th of June 1867 - 1*l.* 1*s.* 7*d.* per cent.
terest on Debentures:—
Average rate on the 30th of June 1867 - - 4*l.* 10*s.* 10*d.* per cent.
terest paid to Loan Commissioners:—
Rate of interest - - - - - 4*l.* per cent.

his railway gives to the towns of Dungannon and Omagh, and a large part of the ty of Tyrone, railway communication with the Ulster and the Dublin and Belfast tion systems of railways. It also establishes a more direct route from the London- y and Enniskillen line at Omagh, to Belfast and to Dublin.

he district of country which may be considered to be accommodated by the line races an area of 273,071 acres, with a population of 114,177 persons.

THE LINE.

he line from Portadown to Dungannon was constructed under an Act of 1847, time for completing the works having been first extended by order of the Railway missioners in 1848, and afterwards by an Act of 1853. The line was completed magh under an Act of 1857. 10 & 11 Vict. c. 153. 16 & 17 Vict. c. 57.

he following table shows the dates when the works were authorized, and the several ons of the line sanctioned for traffic:— 20 & 21 Vict. c. 120.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
y 1847 - -	Portadown - -	Dungannon - -	13½	13 April 1858.
gust 1857 -	Dungannon - -	Omagh - - -	27½	23 Aug. 1861.

Relations of the Portadown, Dungannon, and Omagh with other Railway Companies.

he lines in connexion with the Portadown, Dungannon, and Omagh Junction Railway tated in the following table:—

Name of Railway Company.	Point of Junction.	Page of Report.
ondonderry and Enniskillen - -	Omagh - - -	114
Ulster - - - - -	Portadown - - -	130
Dublin and Belfast Junction - -	Portadown - - -	85

Londonderry and Enniskillen Railway (worked by the Irish North Western Railway).

he Londonderry and Enniskillen Railway Company, under the Act of 1860, made a station at Omagh, and by an award dated the 12th of October 1861, the Portadown, gannon, and Omagh Junction Company pays to the Irish North-Western Company, work the traffic of the Londonderry and Enniskillen line, 2½ per cent. per annum he total cost of the Omagh station and offices. 23 & 24 Vict. c. 121.

The Ulster Railway.

he Portadown, Dungannon, and Omagh Junction Railway is leased to the Ulster pany for 988 years, from the 27th of February 1861, subject to a power reserved to the d of Trade to determine the lease. The rent varies from a minimum of 10,500*l.* a according to the traffic receipts.

The Dublin and Belfast Junction Railway.

he Portadown, Dungannon, and Omagh Junction Railway joins the Ulster Railway e same point as the Dublin and Belfast Junction line, at Portadown.

Waterford and Kilkenny Railway.

56. THE WATERFORD AND KILKENNY RAILWAY.

WATERFORD to KILKENNY.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
MAIN LINE.			
WATERFORD to KILKENNY*	29	—	29
Total number of miles owned by the Company	29	—	29
LINE WORKED BY THE COMPANY.			
The Kilkenny Junction (from Kilkenny to Abbeyleix)	19	—	19
Total mileage worked and maintained by the Company	48	—	48

Length of main line - - - - 29 miles.
Length of railway worked but not owned by the Company 19 „
Total mileage worked and maintained by the Company. 48 „

CAPITAL.

Capital authorized:—

	£
Shares†	450,000
Borrowing Powers†	149,000
Total	£599,000

Financial position on the 29th September 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares	250,000
Preference Shares	196,885
Debentures	29,046
Debenture Stock	61,331
Loan Commissioners	56,658
Total Capital	£593,920

Floating liabilities, less floating assets - - £157,521

Net revenue of each of the last three years, as returned by the Company:—

	£
1864–65	10,764
1865–66	11,327
1866–67	11,212
Average of three years	£11,101

Dividend on Ordinary Shares:—
1864–65
1865–66
1866–67 } - - - - - Nil.

Dividend on Preference Shares:—
Average of three years ended the 29th of Sept. 1867, 1*l.* 7*s.* 6*d.* per cent.

Interest (average rate on the 29th of Sept. 1867):—
On Debentures - - - 5*l.* 12*s.* 3*d.* per cent.
On Debenture Stock - - 5*l.* per cent.
To Loan Commissioners - - 3*l.* 16*s.* 9*d.* per cent.

* The Waterford and Kilkenny Company runs its carriages over 1¾ miles of the Waterford and Limerick line.
† In addition to this there are powers for raising 110,000*l.* in shares and 36,600*l.* in loans for the Central Ireland Railways, promoted by this and the Kilkenny Junction Company.

Waterford and Kilkenny Railway.

is line connects the city of Kilkenny, the Kilkenny Junction line, and the Kilkenny
n of the Great Southern and Western line with the city of Waterford.
district of country which may be considered to be accommodated by the line
ces an area of 252,181 acres, with a population of 121,388 persons.

THE LINE.

is railway was constructed under an Act of 1845, certain deviations having been 8 & 9 Vict. c. 87.
rized and an extension of line granted in 1848.
was originally intended to construct the line with wooden rails upon the principle of 11 & 12 Vict. c. 61.
er's Patent Guide Wheel system, but by the Act of 1850 it was provided that the 13 & 14 Vict. c. 62.
y should be constructed with iron rails on the ordinary principle.
e following table shews the dates when the works were authorized, and the several
ns of the line sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
ly 1845 -	Kilkenny - -	Thomastown -	11	12 May 1848.
„ -	Thomastown -	Jerpoint - -	1½	29 May 1850.
„ -	Jerpoint - -	Fiddown - -	16	18 May 1853.
„ -	Fiddown - -	Junction with Waterford and Limerick.	¾	7 Sept. 1864.

ELATIONS OF THE WATERFORD AND KILKENNY WITH OTHER RAILWAY COMPANIES.

e lines in connexion with the Waterford and Kilkenny are stated in the following
—

Name of Railway Company.	Point of Junction.	Page of Report.
orked by the Waterford and Kilkenny Company.		
Kilkenny Junction - - - -	Kilkenny - - - -	138
Other Completed Lines.		
Waterford and Limerick - -	Waterford - - - -	140
Great Southern and Western - -	Near Kilkenny - - -	100

The Kilkenny Junction Railway.

s line is worked by the Waterford and Kilkenny Company under an agreement of st of October 1865, for five years, determinable on twelve months' notice, for two gs per train mile for three or more trains daily, and terminal charges for the use of ny station of the Waterford and Kilkenny Company.

The Waterford and Limerick Railway.

e arrangements between the Waterford and Kilkenny Company and the Waterford imerick Company as to the use of the part of the Waterford terminus and line of ter Company are at present referred to an arbitrator appointed by the Board of .

The Great Southern and Western Railway.

e Kilkenny branch of this railway meets the Waterford and Kilkenny line about two from Kilkenny, and runs parallel to it into the Kilkenny station, part of which the Southern and Western Company have purchased on a lease in perpetuity from Waterford and Kilkenny Company at a nominal rent.

Kilkenny Junction Railway.

57. THE KILKENNY JUNCTION RAILWAY.

KILKENNY to ABBEYLEIX.

LENGTH OF LINE.

	Single.	Double.	Total
MAIN LINE.			
KILKENNY to ABBEYLEIX - - - - - - -	Miles. 19	Miles. —	Miles 19
Total mileage completed and working - - - -	19	—	19
EXTENSION NOT OPEN TILL AFTER 1ST OF MAY 1867.			
(*a.*) The Maryborough extension from Abbeyleix to Maryborough - -	9½	—	9½
Total mileage authorized - - - - -	—	—	28½

Length of main line - - - - 19 miles.
Length of authorized extension - - - 9½ „

Total mileage authorized - - - 28½ „

The line is worked and maintained by the Waterford and Kilkenny Company.

CAPITAL.

Capital authorized:—

	£
Shares - - - - - -	274,000*
Borrowing Powers - - - -	90,600*
Total - - -	£364,600

Financial position on the 1st of May 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares - - - -	50,575
Preference Shares - - -	40,880
Debentures - - - - -	65,958
Total Capital - - -	£157,413

Floating liabilities, less floating assets - - £120,132

Net revenue of each of the last three years, from Company's accounts:—

1864–65
1865–66 } - - - - - Nil.
1866–67

No dividend declared.

Interest on Debentures, 5*l.* 0*s.* 0*d.* per cent.

The district of country which may be considered to be accommodated by the line embraces an area of 230,434 miles, with a population of 58,232 persons.

THE MAIN LINE.

23 & 24 Vict. c. 153.

The line from Kilkenny to Abbeyleix was constructed under an Act of 1860.

24 & 25 Vict. c. 232.

A railway from Kilkenny to the Great Southern and Western line was authorized in 1846, but the powers were allowed to expire. In 1860 the line was proposed to join

* In addition to this there are powers for raising 110,000*l.* in shares and 36,600*l.* in loans for the Central Ireland Railways promoted by this and by the Waterford and Kilkenny Company.

Great Southern and Western line at Mountrath, but this was abandoned for the yborough route in 1861. Kilkenny Junction Railway.

Date of Act.	Length sanctioned by Board of Trade with date of sanction.			
	From	To	Distance.	Date.
			Miles.	
ly 1860 -	Kilkenny - -	Abbeyleix - -	19	11 Feb. 1865.

EXTENSION NOT OPEN TILL AFTER THE 1ST OF MAY 1867.

(*a.*) *The Maryborough Extension.*

Abbeyleix to Maryborough. ($9\frac{1}{2}$ miles.)

The extension to Maryborough was authorized in 1861. It was not sanctioned for ic until the 15th of May 1867, and therefore no returns of traffic have been made er the Treasury Minute.

RELATIONS OF THE KILKENNY JUNCTION WITH OTHER RAILWAY COMPANIES.

The lines which are in connexion with the Kilkenny Junction, are stated in the owing table:—

Name of Railway Company.	Point of Junction.	Page of Report.
Completed Lines.		
Waterford and Kilkenny - -	Kilkenny - - - - -	136
Great Southern and Western - -	Maryborough and Kilkenny - -	100
Line authorized but not commenced.		
Central Ireland - - - - -	Maryborough - - - -	43

The Waterford and Kilkenny Railway.

This Company holds 8,750*l.* stock of the Kilkenny Junction Company, and works the ic under an agreement for five years from 31st Oct. 1865, at 2*s.* per train mile and inimal charges if three trains run daily, or 2*s.* 4*d.* per mile if less than three trains are 23 & 24 Vict. c. 153.

The Great Southern and Western Railway.

The Kilkenny Junction Railway joins the Great Southern and Western line close to Maryborough station of the Company.

The Kilkenny Junction Company has recently instituted law proceedings to compel Great Southern and Western Company to afford facilities for through traffic.

The Central Ireland.

This line is a continuation of the Kilkenny Junction line from Maryborough to llingar, and is promoted by the Kilkenny Junction and Waterford and Kilkenny mpanies.

Waterford and Limerick Railway.

58. THE WATERFORD AND LIMERICK RAILWAY.

WATERFORD to LIMERICK.

LENGTH OF LINE.

—	Single.	Double.	Total.
MAIN LINE.	Miles.	Miles.	Miles.
WATERFORD to LIMERICK	53¾	23½	77¼
Total number of miles owned by the Company	53¾	23½	77¼
LINES WORKED AND MAINTAINED BY THE COMPANY.			
The LIMERICK AND CASTLECONNELL, with KILLALOE EXTENSION (from Killonan Junction to Killaloe).	13	—	13
The LIMERICK AND ENNIS (from Limerick to Ennis)	24	—	24
The LIMERICK AND FOYNES (from Limerick to Foynes)	25½	¾	26¼
The RATHKEALE AND NEWCASTLE (Co. LIMERICK), (from Ballingrane Junction to Newcastle).	10	—	10
Total number of miles worked by the Company	126¼	24¼	150½

Length of main line - - - - - 77¼ miles.
Length of line worked and maintained, but not owned by the Company - - - - - 73¼ „
Total mileage worked and maintained by the Company - 150½ miles.

CAPITAL.

Capital authorized:—

	£
Shares	1,000,000
Borrowing Powers	328,100
Total	£1,328,100

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares	501,513
Preference Shares	428,150
Debentures	251,165
Debenture Stock	16,000
Loan Commissioners	54,801
Total Capital	£1,251,629

Floating liabilities, less floating assets - - - £77,686

Net revenue of each of the last three years, as returned by the Company:

	£
1864–65	38,715
1865–66	41,705
1866–67	41,795
Average of three years	£40,738

Dividend on Ordinary Shares:—

1864–65	15*s.* per cent.
1865–66	15*s.* „
1866–67	15*s.* „

Dividend on Preference Shares:—
Average of three years ended the 30th of June 1867, 4*l.* 17*s.* 9*d.* per cent.

Waterford and Limerick Railway.

terest (average rate on the 30th of June 1867) :—

On Debentures - - - - 4*l.* 17*s.* 3*d.* per cent.

On Debenture Stock - - - { 4*l.* 0*s.* 0*d.* „ / 4*l.* 5*s.* 0*d.* „ / 4*l.* 7*s.* 6*d.* „ / 4*l.* 10*s.* 0*d.* „

terest paid to Loan Commissioners :—

Rate of Interest - - - - 3*l.* 10*s.* 0*d.* per cent.

his railway connects the city of Limerick with the city and port of Waterford with nmel and a portion of the counties of Waterford and Tipperary, and with the Great thern and Western line at the Limerick Junction.

The district of country which may be considered to be accommodated by the line races an area of 778,327 acres, with a population of 272,998 persons.

THE LINE.

The line was constructed under an Act of 1845, subject to certain deviations horized in 1847 and in 1851, when an extension of time was also granted. The ex- sion from the old to the new terminus at Waterford was constructed under an Act 860.

8 & 9 Vict. c. 131.
9 & 10 Vict. c. 231.
14 & 15 Vict. c. 110.
23 & 24 Vict. c. 160.
7 Geo. 4. c. 139.

The following table shews the dates when the works were authorized and the several tions of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
uly 1845 - -	Limerick - -	Tipperary - -	25	2 May 1848.
„ - -	Tipperary - -	Clonmel - - -	24	30 April 1852.
„ - -	Clonmel - - -	Fiddown - - -	18¼	18 April 1853.
„ - -	Fiddown - - -	Dunkitt - - -	8	23 Aug. 1853.
„ - -	Dunkitt - - -	Waterford - -	1½	7 Sept. 1854.
uly 1860 - -	Old Terminus, Waterford.	Present Terminus -	¼	15 Aug. 1864.

Relations of the Waterford and Limerick with other Railway Companies.

The lines in connexion with the Waterford and Limerick are stated in the following le :—

Name of Railway Company.	Point of Junction.	Page of Report.
Lines worked by the Waterford and Limerick.		
Limerick and Ennis - - -	Limerick - - - -	145
Limerick and Foynes - - -	Limerick - - - -	146
Limerick and Castleconnell (with Killoe Extension).	Limerick - - - -	143
Rathkeale and Newcastle - -	By working the Limerick and Foynes line.	148
Other completed lines.		
Waterford and Kilkenny - -	Waterford - - - -	136
Great Southern and Western - -	Limerick Junction - -	100
Cork and Limerick Direct - -	By the use of part of the Limerick and Foynes line.	106.
Line commenced but not completed.		
Southern - - - -	Clonmel - - - -	66
Line authorized but not commenced.		
Clonmel, Lismore, and Dungarvan -	Clonmel - - - -	44

The Limerick and Ennis Railway.

The Waterford and Limerick Company works and maintains this line for 20 years, n the 23rd of April 1861, for 45 per cent. of gross receipts and 250*l.* a year rent for use of the Limerick station. The agreement was confirmed by an Act of 1862.

25 & 26 Vict. c. 191.

Waterford and Limerick Railway.

The Limerick and Foynes Railway.

The Waterford and Limerick Company works and maintains this line for 3,700*l.* year, and has subscribed 17,500*l.* to the line. A Bill is being promoted in the pres session for confirming the purchase of 5,850*l.* preference shares in this line.

The Limerick and Castleconnell (with Killaloe Extension) Railway.

The Waterford and Limerick Company has subscribed 5,000*l.* to this line, and work and maintains it under an agreement of the 20th of July 1860 for six years, ending 28 March 1868, for 1*s.* 11*d.* per train mile, if three trains run, and 2*s.* 3*d.* if two trains run.

The Rathkeale and Newcastle Railway.

The Waterford and Limerick Company works and maintains this line for 2*s.* 3*d.* pe train mile, subject to modifications, and has subscribed 5,000*l.* to it.

The Waterford and Kilkenny Railway.

This Company uses part of the old terminus at Waterford, and a portion of the line o the Waterford and Limerick Company, and the terms of user and rights of the Com pany are referred at present to an arbitrator, appointed by the Board of Trade.

The Great Southern and Western Railway.

8 & 9 Vict. c. 131. s. 49.

The Great Southern and Western Company has a right under the Act of 1845 t use the portion of the Waterford and Limerick line between the Limerick junctio and Limerick.

The Cork and Limerick Direct Railway.

This Company uses the Limerick terminus of the Waterford and Limerick Company at a rent of 432*l.* 10*s.* a year.

The Southern Railway.

This line will join the Waterford and Limerick Railway at the Clonmel station, the Company has power to use that station, and to enter into working agreements with the Waterford and Limerick Company, and to have traffic forwarded over that line to the junction with the Clonmel, Lismore, and Dungarvan Company.

The Clonmel, Lismore, and Dungarvan Railway.

The Waterford and Limerick Company has power to make working agreements with the Clonmel, Lismore, and Dungarvan Company.

The Athenry and Ennis Junction Railway.

The Waterford and Limerick Company has subscribed 4,000*l.* to this line, which is a continuation of the Limerick and Ennis line (worked by the Waterford and Limerick Company).

59. THE LIMERICK AND CASTLECONNELL RAILWAY (including KILLALOE EXTENSION).

KILLONAN JUNCTION to KILLALOE.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
KILLONAN JUNCTION to KILLALOE - - - - - -	13	—	13
Total number of miles owned by the Company - - - -	13	—	13
AUTHORIZED EXTENSION.			
THE SHANNON EXTENSION (from Killaloe to the Shannon) - -	—	—	$\frac{3}{4}$
Total mileage authorized - - - - - -	—	—	$13\frac{3}{4}$

Length of main line - - - - 13 miles.
Length of authorized extension - - $\frac{3}{4}$ „
Total mileage authorized - - $13\frac{3}{4}$ miles.

The line is worked and maintained by the Waterford and Limerick Company.

CAPITAL.

Capital authorized:—

	£
Shares - - - - -	69,500
Borrowing Powers - - - -	22,833
Total - - -	£92,333

Financial position on the 30th of June 1867, as ascertained by the Commission:

Capital raised by the Company:—

	£
Ordinary Shares - - - -	53,713
Preference Shares - - - -	7,780
Debentures - - - -	20,333
Total Capital - - -	£81,826
Floating liabilities, less floating assets - - -	£8,549

Net Revenue of each of the last three years, as returned by the Company:—

	£
1864–65 - - - - -	389
1865–66 - - - - -	578
1866–67 - - - - -	629
Average for three years - - -	532

Dividend on Ordinary Shares:—

1864–65
1865–66
1866–67 } - - - - - - Nil.

Dividend on Preference Shares:—

Average of three years ended the 30th of June 1867 - Nil.

Interest (average rate on the 30th of June 1867):—

On Debentures - - - - 5*l.* 6*s.* 10*d.* per cent.

Limerick and Castleconnell Railway.

The line connects Limerick with Killaloe. The Extension will reach the deep wat of the Shannon immediately beyond that place.

It also connects the Birdhill branch of the Great Southern and Western line wi Limerick.

The district of country which may be considered to be accommodated by the li embraces an area of 159,196 acres, with a population of 74,457 persons.

THE LINE.

18 & 19 Vict. c. 76. 21 & 22 Vict. c. 144.

The line from Killonan Junction to Castleconnell was constructed under an Act 1855, and the extension to Killaloe under an Act of 1858.

The following table shews the dates when the works were authorized, and the sever portions of the line sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
26 June 1855 -	Killonan Junction -	Castleconnell - -	$5\frac{1}{2}$	2 Sept. 1858.
2 Aug. 1858 -	Castleconnell - -	Birdhill - -	$4\frac{1}{2}$	1 May 1860.
" " - -	Birdhill - - -	Killaloe - - -	3	28 March 1862.

(*a.*) *The Shannon Extension.*

(From Killaloe to the Shannon.)

($\frac{3}{4}$ miles.)

29 & 30 Vict. c. 339.

This extension was authorized in 1866, but is not yet completed.

Relations of the Limerick and Castleconnell with other Railway Companies.

The lines in connexion with the Limerick and Castleconnell are stated in the following table:—

Name of Railway Company.	Point of Junction.	Page of Report.
The Waterford and Limerick - - -	Killonan Junction - - -	140
The Great Southern and Western - -	Birdhill Junction - - -	100

The Waterford and Limerick Railway.

This Company has subscribed 5,000*l.* to the Limerick and Castleconnell Railway, and works the traffic by agreement, as stated in page 142.

The Great Southern and Western Railway.

The Birdhill branch of this railway joins the Limerick and Castleconnell line near the Birdhill Station; the Great Southern and Western Company holds 11,096*l.* of the capital of the Killaloe Extension.

Relations of the Limerick and Castleconnell with other Companies with respect to the Traffic on the Shannon.

The Limerick and Castleconnell Company is authorized to make arrangements for navigating steam or other vessels on the Shannon, and to make traffic arrangements with the Grand Canal Company, the City of Dublin Steam Packet Company, the Great Southern and Western, the Midland Great Western, the Midland Counties and Shannon Junction, the Parsonstown and Portumna Bridge, and the Great Northern and Western Railway Companies.

60. THE LIMERICK AND ENNIS RAILWAY.

LIMERICK to ENNIS.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
ICK to ENNIS - - - - - - -	24	—	24

his line is worked and maintained by the Waterford and Limerick Company.

CAPITAL.

apital authorized :—

	£
Shares - - - - - -	150,000
Borrowing Powers - - - -	75,000
Total - - - -	£225,000

inancial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :—

	£
Ordinary Shares - - - - -	84,563*
Preference Shares - - - -	12,325
Debentures - - - - -	50,150
Loan Commissioners - - - -	22,809
Total Capital - - - -	£169,847
loating liabilities, less floating assets - - -	£25,689

et revenue of each of the last three years, as returned by the Company :—

	£
1864–65 - - - - - -	4,557
1865–66 - - - - - -	5,026
1866–67 - - - - - -	5,354
Average for three years - - -	£4,979

ividend on Ordinary Shares :—

1864–65 1865–66 1866–67 - - - - -	Nil.

ividend on Preference Shares :—

Average of three years ended the 30th of June 1867 Nil.

terest on Debentures :—

Average rate on the 30th of June 1867 - 5*l.* 15*s.* 1*d.* per cent.

terest paid to Loan Commissioners :—

Rate of interest - - - 3*l.* 10*s.* 0*d.* per cent.

his railway connects the town of Ennis and a large part of the county of Clare with city of Limerick.

he district of country which may be considered to be accommodated by the line aces an area of 384,552 acres, with a population of 121,362 persons.

* This includes 7,415*l.* forfeited shares.

Limerick and Ennis Railway.

THE LINE.

The line was constructed under an Act of 1846, the time for compulsory purchase w
9 & 10 Vict. c. 195. extended by a warrant of the Railway Commissioners, and was renewed in 1853. Th
16 & 17 Vict. c. 114. time for completing the works was also extended, and the name of the company change from the Limerick, Ennis, and Killaloe Junction Company to the Limerick and Enn Company.

The following table shews when the works were authorized, and the several portions the line sanctioned for traffic:—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
16 July 1846 - -	The River Shannon -	Clare Castle -	22	26 Dec. 1858.
" " -	Clare Castle -	Ennis - -	1¾	28 June 1859.

Relations of the Limerick and Ennis with other Railway Companies.

The lines in connexion with the Limerick and Ennis railway are stated in the followin table:—

Name of Railway Company.	Point of Junction.	Page of Report.
The Waterford and Limerick - - -	Limerick - - - - -	140
Line commenced but not completed.		
The Athenry and Ennis - - -	Ennis - - - - -	55

The Waterford and Limerick Railway.

25 & 26 Vict. c. 191. The Waterford and Limerick Company works and maintains the Limerick and Enni railway for 20 years from the 22nd of April 1861, for 45 per cent. of gross receipts an 250*l.* a year rent for the use of the Limerick station. The agreement was confirmed by a Act of 1862.

The Athenry and Ennis Railway.

This line is an extension of the Limerick and Ennis line to the Midland Great Weste at Athenry. The Athenry and Ennis Company is authorized to use the Enni station of the Limerick and Ennis Company.

Limerick and Foynes Railway.

61. THE LIMERICK AND FOYNES RAILWAY.

Limerick to Foynes.

LENGTH OF LINE.

	Single.	Double.	Total.
	Miles.	Miles.	Miles.
Limerick to Foynes - - - - - - -	25½	¾	26¼

This line is worked by the Waterford and Limerick Company.

CAPITAL.

Capital authorized :—

	£
Shares	175,000
Borrowing Powers	43,300
Total	£218,300

Financial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :—

	£
Ordinary Shares	97,037
Preference Shares	28,488
Debentures	17,500
Loan Commissioners	25,773
Total Capital	£168,798

Floating liabilities, less floating assets - - - £29,249

Net revenue of each of the last three years, as returned by the Company :—

	£
1864–65	2,415
1865–66	3,161
1866–67	4,046
Average of three years	£3,207

Dividend on Ordinary Shares :—

1864–65, 1865–66, 1866–67 - - - - - Nil.

Dividend on Preference Shares :—

Average of three years ended the 30th of June 1867 - Nil.

Interest on Debentures :—

Average rate on the 30th of June 1867, 5*l.* 15*s.* 1*d.* per cent.

Interest paid to Loan Commissioners :—

Rate of interest* - - - 3*l.* 10*s.* per cent.

This line connects the city of Limerick with the Shannon at Foynes, where it was xpected an Atlantic steam station would be established. The Government has spent considerable sum of money in the construction of piers, but they are only used for ummer traffic on the Shannon.

The district of country which may be considered to be accommodated by the line mbraces an area of 96,909 acres, with a population of 73,899 persons.

THE LINE.

16 & 17 Vict. c. 168.

The line was constructed under an Act of 1853.

The following table shows the dates when the works were authorized, and the several ortions of the line sanctioned for traffic :—

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
			Miles.	
August 1853 -	Limerick - -	Rathkeale - -	16¾	22 July 1856.
„ „ -	Rathkeale - -	Askeaton - -	4	13 May 1857.
„ „ -	Askeaton - -	Foynes - -	5¾	27 April 1858.

* The Government loan has been converted into a fixed annuity for 22 years.

Limerick and Foynes Railway.

Relations of the Limerick and Foynes with other Railway Companies.

The lines in connexion with the Limerick and Foynes are stated in the following table :—

Name of Railway Company.	Point of Junction.	Page of Report.
The Waterford and Limerick	Limerick	140
The Cork and Limerick Direct	Patrick's Well Junction	106
The Rathkeale and Newcastle	Ballingarrane Junction	148

The Waterford and Limerick Railway.

The Waterford and Limerick Company has subscribed 17,500*l.* to the Limerick and Foynes line, and works the traffic under an agreement of the 9th of October 1863 for 3,700*l.* a year, for three trains a day in summer, and two trains a day in winter.

The Cork and Limerick Direct Railway.

The Cork and Limerick Direct Company uses the part of the Limerick and Foynes line between Patrick's Well Junction and Limerick.

The Rathkeale and Newcastle Railway.

The Limerick and Foynes Company is authorized to subscribe 5,000*l.* to the Rathkeale and Newcastle line, and that power has been exercised to the extent of 2,500*l.*

The Great Southern and Western Railway.

The Great Southern and Western Company is authorized to subscribe 15,000*l.* to the Limerick and Foynes line, but that power has not been exercised.

Rathkeale and Newcastle Railway.

62. THE RATHKEALE AND NEWCASTLE (Co. LIMERICK) JUNCTION RAILWAY.

From Ballingarrane Junction to Newcastle (Co. Limerick).

LENGTH OF LINE.

	Single.	Double.	Total.
Ballingarrane Junction with the Limerick and Foynes Line to Newcastle (Co. Limerick).	Miles. 10	Miles. —	Miles. 10

This line is worked and maintained by the Waterford and Limerick Company.

CAPITAL.

Capital authorized :—	£
Shares	62,000
Borrowing Powers	31,600
Total	£93,600

Rathkeale and Newcastle Railway.

Financial position on the 30th of June 1867, as ascertained by the Commission :—

Capital raised by the Company :—	£
Ordinary Shares	16,514
Preference Shares	10,050
Loan Commissioners	16,600
Total Capital	£43,164
Floating liabilities, less floating assets	£29,882

Net revenue, as returned by the Company :—

	£
1866–67 (from 1st January to 30th June 1867)	262

The line was only opened on the 1st of January 1867. No dividend has yet been paid.

Interest paid to Loan Commissioners, 5*l.* per cent.

This railway connects the towns of Newcastle (co. Limerick) and Rathkeale with the ity of Limerick.

The district of country which may be considered to be accommodated by the line nbraces an area of 212,460 acres, with a population of 50,086 persons.

THE LINE.

The line was constructed under an Act of 1861. 24 & 25 Vict. c. 168.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
2 July 1861	Ballingarrane Junction	Newcastle	Miles. 10	30 October 1866.

Relations of the Rathkeale and Newcastle with other Railway Companies.

The lines in connexion with the Rathkeale and Newcastle Railway are stated in the llowing table :—

Name of Railway Company.	Point of Junction.	Page of Report.
he Limerick and Foynes (worked by the Waterford and Limerick).	Ballingarrane Junction near Rathkeale	146
Line authorized but not commenced.		
he Limerick and North Kerry	Newcastle	48

The Limerick and Foynes Railway.

The Limerick and Foynes Company has subscribed 2,500*l.* to the Rathkeale and ewcastle Railway. The Cork and Limerick Direct Company has not subscribed, though uthorized to do so.

The Waterford and Limerick Company has subscribed 5,000*l.* to the Rathkeale and ewcastle railway, and has agreed to work the line for 10 years from opening at vo shillings and threepence per train mile for two trains a day, with a reduction if more an two trains are run. If the gross receipts reach 5,200*l.* per annum, the line is to be orked for 45 per cent. of that amount; the Waterford and Limerick Company on ecuring the mortgages and interest on preference shares, and 4 per cent. on ordinary ares, may claim a perpetual lease of the line. 27 & 28 Vict. c. 236.

The Limerick and North Kerry Railway.

This is an extension of the Rathkeale and Newcastle line to Listowel in the county of erry.

Waterford and Tramore Railway.

63. THE WATERFORD AND TRAMORE RAILWAY.

LENGTH OF LINE.

	Single.	Double.	Total.
WATERFORD to TRAMORE	Miles. 7¼	Miles. —	Miles. 7¼

CAPITAL.

Capital authorized:—

	£
Shares	58,000
Borrowing Powers	19,350
Total	£77,350

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary shares	48,000
Preference shares	10,000
Debentures	19,350
Total capital	£77,350

Floating liabilities, less floating assets - - - £205

Net revenue of each of the last three years, as returned by the Company:—

	£	s.	d.
1864–65	1,850	0	0
1865–66	1,686	0	0
1866–67	2,328	0	0
Average of three years	£1,955	0	0

Dividend on Ordinary Shares:—

	£	s.	d.	
1864–65	0	15	0	per cent.
1865–66	1	0	0	,,
1866–67	1	5	0	,,

Dividend on Preference Shares:—

Average of three years ended the 30th of June 1867, 5*l.* per cent.

Interest (average rate on the 30th of June 1867):—

On Debentures - - - 5*l.* 1*s.* 4*d.* per cent.

The railway connects the city of Waterford with the town of Tramore (a bathing place on the sea coast).

The district of country which may be considered to be accommodated by the line embraces an area of 76,463 acres, with a population of 47,056 persons.

THE LINE.

15 Vict. 12. 21 Vict.

The line was constructed under an Act of 1851, and certain improvements in the terminus at Waterford under an Act of 1857.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
24 July 1851	Waterford	Tramore	Miles. 7¼	10 Sept. 1853.

RELATIONS OF THE WATERFORD AND TRAMORE WITH OTHER RAILWAY COMPANIES.

Name of Railway.	Point of Junction.	Page of Report.
Authorized but not commenced.		
he Waterford and Passage - - -	Ballytruckle Junction, about half a mile from Waterford.	52

The Waterford and Passage Railway.

This Railway will join the Waterford and Tramore line about half a mile from Waterord; and the Waterford and Passage Company has power to lay down an additional ne of rails into Waterford and to use the station on terms to be settled by arbitration in ase of difference.

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64. THE WEST CORK RAILWAY.

BANDON to DUNMANWAY, with extension to Skibbereen.

LENGTH OF LINE.

	Single.	Double.	Total.
MAIN LINE.	Miles.	Miles.	Miles.
NDON to DUNMANWAY - - - - - - - -	17½	—	17½
Total number of miles owned by the Company - - -	17½	—	17½
AUTHORIZED EXTENSION.			
) The SKIBBEREEN EXTENSION (from Dunmanway to Skibbereen) - -	—	—	16
Total number of miles authorized - - - - -	—	—	33½

Length of main line - - - - - 17½ miles.
Length of authorized extension - - - 16 „
Total mileage authorized - - - 33½ miles.

CAPITAL.

Capital authorized:—

	£
Shares - - - - - -	320,000
Borrowing Powers - - - -	121,600
Total - - - - -	£441,600

Financial position on the 30th of June 1867, as ascertained by the Commission:—

Capital raised by the Company:—

	£
Ordinary Shares - - - -	66,817
Preference Shares - - - -	54,420
Debentures - - - - -	106,500
Total Capital - - - -	£227,737

Floating liabilities, less floating assets - - - £89,785

Net revenue, as returned by the Company:—

1866–67 - - - - - - £946

Part of line opened 12th June 1866.

West Cork Railway.

Dividend on Ordinary Shares:—

1866–1867 - - - - - - Nil.

Dividend on Preference Shares - - - - - Nil

Interest on Debentures:—

Average rate on the 30th of June 1867 - 5*l.* 0*s.* 9*d.* per cent.

This line connects the town of Dunmanway and intermediate places with Cork, and will be extended to Skibbereen.

The district of country which may be considered to be accommodated by the line embraces an area of 347,131 acres, with a population of 93,309 persons.

This line connects the town of Dunmanway and part of the county of Cork with the Cork and Bandon Railway. Communication is thus afforded to Cork. The extension from Dunmanway to Skibbereen is partly commenced.

THE LINE.

Bandon to Dunmanway.

(17½ miles, single line.)

3 & 24 Vict. c. 203.
8 & 29 Vict. c. 232.

The line to Dunmanway was constructed under an Act of 1860, the time for completing the works having been extended in 1865.

Date of Act.	Length sanctioned by Board of Trade, with Date of Sanction.			
	From	To	Distance.	Date.
28 August 1860 -	Bandon - -	Dunmanway -	Miles. 17½	20 June 1866.

Extension commenced but not completed.

(*a.*) *The Skibbereen Extension.*

Dunmanway to Skibbereen.

(16 miles.)

30 & 31 Vict. c. 192.

This extension was authorized in 1860, the time for completing the works was extended in 1865, and again in 1867 for two years, ending 12th August 1869.

The provision for the baronies contributing in the Act of 1860 does not begin to operate until the line is completed to Skibbereen. The baronial contribution, when payable, is such a sum as will be equal to the deficiency between half the gross receipts and 4½ per cent. on the mortgages not exceeding 66,000*l.* and limited to 20 years.

The baronial assessment is imposed by the Grand Jury on the annual value of land and premises, and is payable by the occupier, but the tenant has the right to deduct one-half of the poundage rate of such assessment from each 1*l.* of his rent. Tithe rentcharges are not liable to any deduction.

Relations of the West Cork with other Railway Companies.

Name of Railway Company.	Point of Junction.	Page of Report.
The Cork and Bandon - - - - -	Bandon - - - -	80

The Cork and Bandon Railway.

The Cork and Bandon Company has not paid the 20,000*l.* it undertook to subscribe to the West Cork Railway, and is now being sued by the assignees of the contractors for the amount. Traffic arrangements are authorized between the two Companies.

RAILWAYS (IRELAND) COMMISSION.

CANALS AND RIVER NAVIGATIONS.

No. in Appendix and on Map.	Canals and River Navigations.	Length in Miles.			Page.
	I.—*In the Possession of Companies or Leased to Companies by Private Owners.*				
65	Barrow Navigation	—	42¼		154
66	Upper Boyne Navigation	—	6		155
67	Grand Canal	93½			156
	(*a.*) The Liffey Branch	3¾			
	(*b.*) The Kildare Branch	7¼			
	(*c.*) The Blackwood Branch	4			
	(*d.*) The Barrow Line Branch	14			
	(*e.*) The Low Town Lateral Branch	1½			
	(*f.*) The Miltown Supply Branch	6½			
	(*g.*) The Athy Branch	14½			
	(*h.*) The Mountmellick Branch	11½			
	(*i.*) The Edenderry Branch	1			
	(*k.*) The Kilbeggan Branch	8¼			
	Total Grand Canal	—	165¾		
68	Lagan Navigation	—	26¼		159
69	Newry Navigation	—	35		161
70	River Suir Navigation	—	16½		162
71	Royal Canal (Midland Great Western Railway Company)	90¼			163
	(*a.*) The Broadstone Harbour Branch	¾			
	(*b.*) The Longford Branch	5¼			
	Total Royal Canal	—	96¼		
72	Foyle Navigation (Strabane to River Foyle)	—	4		
	Total Mileage in the Possession of Companies			392	165
	II.—*Under Local Trustees.*				
73	Ballinamore and Ballyconnell Navigation	—	37¾		166
74	Lower Bann Navigation	—	50¼		167
75	Upper Bann Navigation	—	21¼		168
76	Lough Corrib Navigation	—	23¾		170
	Total Mileage under Local Trustees			133	
	III.—*Under Public Works Commissioners.*				
77	Lower Boyne Navigation	—	12¾		172
78	Maigue Navigation	—	8		173
79	Shannon Navigation	143			174
	(*a.*) The Boyle Branch	9			
	(*b.*) The Strokestown Branch	6			
	Total inland part of Shannon	—	158		
80	Tyrone Navigation	—	4½		176
81	Ulster Canal	—	44		177
	Total Mileage under Public Works Commissioners			227½	
	Total mileage			752¼	

The Barrow Navigation (Company).

INLAND NAVIGATIONS IN THE POSSESSION OF COMPANIES, OR LEASED TO COMPANIES BY PRIVATE OWNERS.

65. THE BARROW NAVIGATION (COMPANY).

Athy to Scars below St. Mullins.
($42\frac{1}{4}$ miles.)
23 locks.

Summit level, at Athy, 180 feet above Ordnance datum, which is 8 feet below the mean sea level.

CAPITAL.

Financial position as ascertained by the Commission on the 30th of June 1867 :—

Capital raised by the Company :	£	s.	d.
Ordinary Shares - - -	60,000	0	0
Cr. Floating assets, less floating liabilities - -	3,014	13	9

Net revenue of each of the last three years, from Company's accounts :—

	£
1864–65 - - - - -	3,846
1865–66 - - - - -	3,269
1866–67 - - - - -	3,100
Average of three years - - -	£3,405

Dividend on Ordinary Shares :—

1864–65 - - -	4*l.* 0*s.* 0*d.* per cent.
1865–66 - - -	4*l.* 10*s.* 0*d.* per cent.
1866–67 - - -	5*l.* 0*s.* 0*d.* per cent.

This navigation connects the Athy branch of the Grand Canal with the tidal part of the river Barrow below St. Mullins and affords water communication to Carlow, Leighlin Bridge, Bagenalstown, Gore's Bridge, and Graiguenamanagh.

The Company acts as the principal carrier on the navigation. It has tug steamers for towing barges from St. Mullins to Waterford, and landing barges at New Ross and Waterford. It has also a carrying trade to Dublin and to the Shannon by means of the Grand Canal.

THE NAVIGATION.

The works were commenced in 1759 by the Commissioners of Inland Navigation in Ireland, and 20,769*l.** of public money was expended. In 1790 the completion of the works was undertaken by the Barrow Navigation Company under the Act which enabled grants of public money to be made to the extent of one-third of the expenditure, and the Company received a grant of 20,000*l.* (Irish) 4 per cent. Government debentures, which produced only 15,897*l.*,† in consideration of its raising a capital of 40,000*l.* (Irish). The Barrow Navigation Company obtained further grants after the Union, under the Act setting apart 500,000*l.* for the completion of inland navigations in Ireland.

Relations of the Barrow Navigation with other Navigations.

Name of Navigation.	Point of Junction.	Page of Report.
The Grand Canal - - - -	Athy - - - -	156

Railway Companies competing with the Barrow Navigation for the Carriage of Goods.

Name of Railway Company.	Page of Report.
The Great Southern and Western - - - - -	100
The Waterford and Kilkenny - - - - - -	136
The Kilkenny Junction - - - - - -	138

* 22,500*l.* Irish. † 17,227*l.* Irish.

The Kilkenny Branch of the Great Southern and Western Railway runs nearly parallel to the Barrow Navigation from Athy to Bagenalstown. There is consequently competition for the goods traffic of this district between the navigation and the Great Southern and Western Railway.

The Great Southern and Western and Kilkenny Junction Railways compete also with the navigations for Dublin and Waterford traffic.

The Bar Naviga (Compa

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66. THE UPPER BOYNE NAVIGATION (COMPANY).

The Up Boyne Navigat (Compar

NAVAN to CARRICKDEXTER, near Slane.

(6 miles.)

8 locks.

Summit level, at Navan, 50 feet above the Boyne River at Carrickdexter.

CAPITAL.

No information from the Company.

Cost before 1800 - - - - £34,268*

This navigation joins the Lower Boyne Navigation near Slane, and thus connects the town of Navan and the port of Drogheda.

THE NAVIGATION.

The works were commenced about 1790, under an Act of the Irish Parliament, by the Boyne Navigation Company, which received before 1800 in public grants 9,964*l.*† 30 Geo. 3. c. 40. (Irish

RELATIONS OF THE UPPER BOYNE NAVIGATION WITH OTHER NAVIGATIONS.

Name of Navigation.	Point of Junction.	Page of Report.
The Lower Boyne Navigation - - -	Above Carrickdexter Lock (near Slane).	172

The Lower Boyne Navigation.

The Upper Boyne Navigation is an extension of the Lower Boyne Navigation to Navan, and thus completes the water communication between Navan and Drogheda.

RAILWAY COMPANIES COMPETING WITH THE UPPER BOYNE NAVIGATION.

Name of Railway Company.	Page of Report.
The Dublin and Drogheda - - - - - -	89

The Dublin and Drogheda Railway.

The Upper and Lower Boyne Navigations run parallel to the Oldcastle branch of the Dublin and Drogheda Railway between Navan and Drogheda.

* 37,125*l.* Irish. † 10,800*l.* Irish.

he Grand Canal Company).

67. THE GRAND CANAL (COMPANY).

(165¾ miles.)
64 canal locks.
2 ship locks.

From DUBLIN to BALLINASLOE, with branches to the Liffey, Robertstown, Blackwood Reservoir, Monasterevin, St. James's Well, Athy, Mountmellick, Edenderry, and Kilbeggan.

	Length in Miles.	Number of Locks.		
		Single.	Double.	Total.
MAIN NAVIGATION.				
DUBLIN to BALLINASLOE - - - - -	93½	33	5	38
BRANCH NAVIGATIONS.				
(*a.*) The LIFFEY BRANCH (from first mile of Main Navigation to the Liffey, including Ringsend Docks) - - -	3¾	7 2 (ship locks)	1	10
(*b.*) The KILDARE BRANCH (from Sallins to Robertstown) -	7¼	5	—	5
(*c.*) The BLACKWOOD BRANCH (from Bonynge Bridge (24th mile) to Blackwood Reservoir).	4	—	—	—
(*d.*) The BARROW LINE BRANCH (from Fenton Bridge (26th mile) to Monasterevin).	14	4	2	6
(*e.*) The LOW TOWN LATERAL BRANCH (from the 26¼ mile on Main Navigation to the 1½ mile on the Barrow Line Navigation.)	1½	—	—	—
(*f.*) THE MILTOWN SUPPLY BRANCH (from the 1½ mile on Barrow Line Branch to St. James's Well, near Newbridge).	6½	—	—	—
(*g.*) The ATHY BRANCH (from Monasterevin to the Barrow Navigation at Athy).	14½	4	—	4
(*h.*) The MOUNTMELLICK BRANCH (from Monasterevin to Mountmellick).	11½	3	—	3
(*i.*) The EDENDERRY BRANCH (from Downshire Bridge (37th mile) to Edenderry).	1	—	—	—
(*k.*) The KILBEGGAN BRANCH (from Camphile Bridge (51½ mile) to Kilbeggan).	8¼	—	—	—
Total - - - -	165¾	58	8	66

Summit level 279 feet above Ordnance datum, and 164 feet above the Shannon at Shannon Harbour.

CAPITAL.

Capital authorized:—

Shares - { Amount of new stock created by the conversion of debentures and old stock into shares, under Stat. 11 & 12 Vict. c. 124. } - - -	£665,938	14 6
Borrowing Powers - - - - { No power to borrow without leave of Lord Lieutenant. }		
Total - - -	£665,938	14 6

Financial position on the 30th of June 1867, as ascertained by the Commission:—
Capital raised by the Company:—

	£	*s.*	*d.*
Ordinary Shares - - - -	665,938	14	6
Cr. Floating assets, less floating liabilities - -	25,448	7	10

Net revenue of each of the last three years, from Company's accounts:—

	£
1864–65 - - - - - -	17,588
1865–66 - - - - - -	15,069
1866–67 - - - - - -	15,625
Average of three years -	£16,094

Dividend on Ordinary Shares:—	£
1864–65 - - - - -	2*l.* 10*s.* 0*d.* per cent.
1865–66 - - - - -	2*l.* 12*s.* 6*d.* per cent.
1866–67 - - - - -	2*l.* 12*s.* 6*d.* per cent.

This navigation connects the Shannon navigation and the Barrow navigation and the intervening districts with Dublin.

THE NAVIGATION.

The works were commenced about 1755 by the Commissioners of Inland Navigation in Ireland. The first grant of public money for the Grand Canal was made in 1753; further grants were made before 1772, amounting in all to 70,496*l.** In that year the completion of the canal was entrusted to a company. Between 1772 and 1800 the Company received grants of public money, which, after providing for a debt of 2,308*l.*† on the canal before it was transferred to it realized 83,776*l.*‡ In consideration of these grants in 1793 provision was made that as soon as the Barrow and Shannon were completely navigable the toll on corn, meal, malt, and flour brought to Dublin from 10 miles below Athy or 10 miles below Banagher should be reduced from 3*d.* to 1½*d.* per ton per mile. 18,231*l.*§ was given to secure the completion of the Ringsend Docks, with a restriction as to the maximum rate of dock dues.

The main line of the canal from James Street Harbour, Dublin, to its junction with the Barrow Line Branch and the Miltown and Blackwood supply Branches and the Barrow Line Branch to Monasterevin were opened for traffic in 1787.

The Athy Branch was opened in 1798, and the Company obtained a loan of public money to the extent of 27,692*l.*‖

The extension from Lowtown to the Shannon and the Edenderry Branch were opened in 1800.

The Liffey Branch was opened in 1801.

On the application of the Grand Canal Company for assistance, onthe grounds that the grant received in 1789 on account of the reduction of the tolls was inadequate, a grant of 138,461*l.*¶ was made, as recommended by Government, and approved by a Committee of the House of Commons in 1813. Regulations were, however, carefully framed to guard against the payment of dividends out of capital, a practice which had previously prevailed, and to establish the Company on such a solvent basis that its effectual management might be secured. The terms were:—

That the Company should raise 46,154*l.*,** to be applied, along with the 138,461*l.*¶ granted in the payment of their debts in such manner as the Lords of the Irish Treasury should approve.

That no dividend should thereafter be made by the Company, except from the clear profits of their canal, after defraying all its expenses and the interest of their debt.

That they should every half-year make out a full statement of their accounts for the preceding six months, verified on the oath of their general accountant, and distribute faithful copies of them ten days at least before each half-yearly meeting to the members of the Company, and to the Lords of the Irish Treasury.

That their colliery should be sold, and the sum it produced be applied, as soon as it could be disposed of at a fair value, to the liquidation of the principal of their debt.

That till the sale took place the income arising from it should be applied to the same purpose, excepting so much (if any) of it as might be necessary to make their increasing income equal to pay the interest of their debt, and the necessary expenses of their navigation.

That they should thereafter raise no further sum of money by way of loan, except with the approbation of the Lords of the Irish Treasury.

That an account should be kept of the amount of all the debt paid by the revenue or for the sale of the colliery, and one-third part of the interest, which would have been payable on that amount, should constitute a sinking fund at compound interest, and be applicable to the reduction of their remaining debt.

And, further, that at all future times the Company should keep 27,692*l.*‖ in Government Securities, to provide for unforeseen demands upon their navigation.

The Kildare Branch was made by the Kildare Canal Company, which received a grant of public money of 2,215*l.*†† in 1789. The Company was wound up, and the Kildare Canal purchased in Chancery by the Grand Canal Company.

* 76,362*l.*, Irish.
† 2,500*l.*, Irish.
‡ 90,758*l.*, Irish.
§ 19,750*l.*, Irish.
‖ 30,000*l.*, Irish.
¶ 150,000*l.*, Irish.
** 50,000*l.*, Irish.
†† 2,400*l.*, Irish.

The Grand Canal (Company).

7 & 8 Vict. c. 98.

11 & 12 Vict. c. 124.

The extension of the canal from the Shannon to Ballinasloe, and the Mount-mellick and Kilbeggan Branches were subsequently made for the purpose of giving employment to the poor, and 98,524*l.* was advanced to facilitate their execution. The extensions were opened in 1830. In 1844 the repayment of this sum was commuted by statute for 10,000*l.*

By an Act of 1848 the original company called "the Undertakers of the Grand Canal," was reconstituted under the name of the Grand Canal Company, and the several classes of debenture holders were converted into shareholders along with the original shareholders on the following scale:—

The reduced 6*l.* per cent. debentures receiving 4*l.* per cent., being allotted 90*l.* new stock for every 100*l.* of debentures; the reduced 5*l.* per cent. debentures then receiving 3*l.* 6*s.* 8*d.* per cent.—75*l.* new stock for every 100*l.* of debentures; the reduced 4*l.* per cent. debentures then receiving 2*l.* 13*s.* 4*d.*—60*l.* new stock for every 100*l.* of debentures, and the ordinary shareholders in the old company being allotted 9*l.* of new stock for every 100*l.* of old stock.

Relations of the Grand Canal Company with other Navigations.

Name of Navigation.	Point of Junction.	Page of Report.
The Shannon Navigation - - -	Shannon Harbour - -	174
The Barrow Navigation - - -	Athy - -	154

The Shannon navigation connects the Grand Canal with a considerable district, and completes the water communication from Dublin to Limerick. The Barrow navigation completes the communication from Dublin to Waterford.

Railway Companies Competing with the Grand Canal for the Carriage of Goods.

Name of Railway Company.	Page of Report.
Completed Lines.	
The Great Southern and Western - - - - - -	100
The Midland Great Western - - - - - - -	118
Lines commenced but not completed.	
TheMidland Counties and Shannon Junction - - - -	63
The Parsonstown and Portumna Bridge - - - - -	65

The Great Southern and Western Railway competes directly with the Grand Canal from Dublin to Athy and to Tullamore, and indirectly for traffic brought to the Grand Canal by the Barrow navigation and the Shannon. The competition for the Shannon traffic will be increased on the completion of the Parsonstown and Portumna Bridge and the Midland Counties and Shannon Junction Railways. The Midland Great Western Railway competes with the Grand Canal to Ballinasloe.

The passenger traffic on the Grand Canal ceased on the opening of the railway system, but the Canal Company received a remission of its debt to the Government (as already noticed) to the extent of 88,524*l.*

The Grand Canal Company carries goods on its own navigation, and on the Shannon from Athlone to Limerick.

68. THE LAGAN NAVIGATION (COMPANY).

LOUGH NEAGH to the Town of BELFAST.

($26\frac{1}{4}$ miles.)

25 locks.

Summit level 120 feet above Ordnance datum and 72 feet above Lough Neagh.

CAPITAL.

Capital authorized :—

Amount held in certain Debentures in 1843 to be the joint stock of the Company, viz. :—

	£	s.	d.
Principal	57,230	15	7
Interest capitalized	22,919	3	4
Total Shares	80,149	18	11
Special Debentures	584	16	11
Power to Loan Commissioners to lend	12,000	0	0
Total	£92,734	15	10

Financial position on the 31st of March 1867, as ascertained by the Commission :—

Capital raised by the Company :—

	£	s.	d.
Ordinary Stock	80,149	18	11
Debentures	584	16	11
Total Capital	£80,734	15	10
Cr. Floating assets, less floating liabilities	£3,619	10	9

Net revenue of each of the last three years to the 31st of March 1867, from the Company's accounts :—

	£
1864–65	1,192
1865–66	1,229
1866–67	1,183
Average of three years	£1,201

Dividend on Ordinary Stock :—

	£	s.	d.	
1864–65	1	10	0	per cent.
1865–66	1	10	0	„
1866–67	1	15	0	„

Interest on Debentures :—

Average rate on the 31st of March 1867 - 5*l.* 0*s.* 0*d.* per cent.

This navigation connects Lough Neagh with the port of Belfast.

THE NAVIGATION.

The works were commenced by the Commissioners of Inland Navigation in Ireland, the expense being defrayed by a local toll on beer, ale, and spirits imposed by an Act of 1753. 27 G. 2. c. 3. (Irish.)

The Lagan Navigation (Company).

11 & 12 G. 3. c. 26.

19 & 20 G. 3. c. 32.

54 Geo. 3. c. 231.

In 1771 the prosecution of the works was handed over to Local Commissioners, wh raised money on the security of these local taxes.

In 1779 the creditors who had advanced money were constituted into a Company fo undertaking the Lagan Navigation.

In 1814 the Company was continued for 21 years.

In 1835 the powers of the original Company expired; but in 1843 the creditors o the original Company were constituted into the present Lagan Navigation Company These creditors had advanced their money at a time when the navigation was sup ported by the local taxes already referred to, which were subsequently abolished b Parliament. The Act of Incorporation recited that all the claims of the creditor should be confined to the navigation, and that the navigation and the right of tolls shoul be accepted by the creditors, subject to a rent of 300*l.* a year to the Queen, in full discharg of their claims. The Act limited the grant of the navigation to the new Compan to 31 years, which will expire in 1874, but it contains an express recital that it wa so limited for the purpose of more effectually securing the due improvement an maintenance of the navigation, but without being intended to exclude the creditor from thereafter making an application for a further extension of time, if in the meantim they should well conduct themselves in the management of the navigation.

The Lagan Navigation Company does not act as carriers on the canal.

RELATIONS OF THE LAGAN NAVIGATION WITH OTHER NAVIGATIONS.

Name of Navigation.	Point of Junction.	Page of Report.
The Upper Bann Navigation - - -	Lough Neagh - - . -	168

The Upper Bann Navigation.

The entrance of the Lagan Navigation into Lough Neagh is in the County Down, and thus is within the part of the Lough entrusted for purposes of navigation to the Upper Bann Navigation Trustees. Through this part of the Lough the Lagan Naviga tion is connected with the Newry Navigation, the Lower Bann Navigation, the Tyrone Canal, and the Ulster Canal.

RAILWAY COMPANIES COMPETING WITH THE LAGAN NAVIGATION COMPANY FOR THE CARRIAGE OF GOODS.

Name of Railway Company.	Page of Report.
The Ulster - - - - - - - - -	130

The Ulster Railway.

The Lagan Navigation runs parallel to the Ulster Railway from Belfast to Moira and in connexion with Lough Neagh, and the Newry and Ulster Canals competes with that Railway as far as Portadown and Clones.

69. THE NEWRY NAVIGATION (COMPANY).

The Newry Navigation (Company)

LOUGH NEAGH to WARRENPOINT.

(35 miles.)

13 canal locks.

1 ship lock.

Summit level - - - - 76 feet above the Ordnance datum.
Do. - - - - 28 feet above Lough Neagh.

CAPITAL.

Capital authorized :—

	£
Shares - - - - - -	80,000
Borrowing Powers - - - -	80,000
Total - - - - -	£ 160,000

Financial position on the 5th of April 1867, as ascertained by the Commission :—

Capital raised by the Company :—

	£	s.	d.
Ordinary Shares - - - -	66,495	7	2
Debentures - - - -	10,800	0	0
Loan Commissioners - - -	35,878	4	7
Total Capital - -	£113,173	11	9
Floating liabilities, less floating assets - -	£2,423	8	0

Net revenue of each of the last three years :—

	£
1864–65 - - - - - -	2,872
1865–66 - - - - - -	4,036
1866–67 - - - - - -	2,785
Average of the three years - - -	£3,231

Dividend on Ordinary Shares - - - - - Nil.

Interest on Debentures :—
Average rate on the 5th of April 1867 - 5*l.* 0*s.* 0*d.* per cent.

Interest paid to Loan Commissioners :—
Rate of Interest - - - 3*l.* 10*s.* 0*d.* per cent.

The navigation commences at Warrenpoint and ends in Lough Neagh, and by that eans connects itself with the Tyrone Canal, the Ulster Canal, Lough Erne, and the ower Bann navigation. The portion from Warrenpoint to Newry is a ship canal, and e part in the town of Newry is enlarged so as to form a floating harbour. The naviga- n was commenced for the purpose of supplying Dublin with native coal, but the undance and cheapness of English sea-borne coal in Dublin has prevented this object ing attained.

THE NAVIGATION.

The works were commenced in 1732 by the Commissioners of Inland Navigation in eland, under an Act of the Irish Parliament of 1730, and finished from Newry to e River Bann about 1740 and from Newry to Fathom about 1770 entirely at the public pense. In 1787 the navigation was intrusted to a Local Board of Trustees called "the orporation for promoting and carrying on the Newry Navigation." In 1800 the Local oard was abolished, and the navigation transferred to the Directors General of Inland avigations in Ireland, and public money to the extent of 21,532*l.** is returned by the ommissioners of Public Works as having been expended between 1800 and 1829. 3 Geo. 2. 27 Geo. 3.

* 23,326*l.* Irish.

The Newry Navigation (Company).

10 Geo. 4. c. 126.

6 Will. 4. c. 71. 4 & 5 Vict. c. 56. 11 & 12 Vict. c. 96.

In 1829 the navigation, with the right of levying toll, was transferred to the New Navigation Company, but the Act of 1829 contained a clause that if the works we not completed within seven years, or the improvement of the canal was wilfu neglected or abandoned by the Company, the Lord Lieutenant of Ireland shou have power to terminate the interest of the Company in the navigation, and th it should revert to the Directors General of Inland Navigations for the benefit of t public.

The time for completing the works was extended in the years 1836, 1841, and 184 the last limit fixed being the 22nd of July 1852.

RELATIONS OF THE NEWRY NAVIGATION WITH OTHER NAVIGATIONS.

Name of Navigation.	Point of Junction.	Page of Report.
The Upper Bann Navigation - -	The entrance of the Upper Bann into Lough Neagh.	168

The Newry Navigation ends at the entrance of the Upper Bann River into Lou Neagh, and the channel through the bar of the Upper Bann, which was made part of th navigation works in the drainage district of the Lough, is placed by the award by th Commissioners of Public Works under the Drainage Acts in charge of the trustees of th Upper Bann Navigation to be kept dredged by them, the expenses being defrayed out the tolls and local taxation at their disposal.

RAILWAY COMPANIES COMPETING WITH THE NEWRY NAVIGATION COMPANY FOR THE CARRIAG OF GOODS.

Name of Railway Company.	Page of Report.
The Newry, Warrenpoint, and Rostrevor - - - - -	128
The Newry and Armagh - - - - - - -	126
The Dublin and Belfast Junction - - - - -	85

This navigation runs parallel to these lines of railway from Warrenpoint to Newry and from Newry to Portadown.

The River Suir Navigation (Company).

70. THE RIVER SUIR NAVIGATION (COMPANY).

From GRANNY FERRY, near WATERFORD, to CARRICK-ON-SUIR.
(16½ miles.)
No locks.

CAPITAL.

Capital authorized:—

	£
Shares - - - - - -	10,000
Debentures - - - -	3,400
Total - - - -	£13,400

Financial position on the 30th of April 1866, as ascertained by the Commission:-

Capital raised by the Company:—

	£
Ordinary Shares - - - - -	8,960
Total Capital - - - -	£8,960
Floating liabilities, less floating assets - - - -	Nil.

Net revenue of each of the last three years, from Company's accounts :—

	£
1863–64	40
1864–65	42
1865–66	47
Average of three years	43

Dividend on Ordinary Shares :—

1864	8*s.* 4*d.* per cent.
1865–66	Nil.
1866	12*s.* 6*d.* per cent.

The dividends are paid irregularly, and the accounts have been taken for three years nded with the last published account. The dividend in 1864 was declared upon the et earnings of three years at 5*s.* per share (20*l.*). The dividend in 1866 was upon the et earnings of two years at 5*s.* per share.

The object of this navigation is to make a short canal near Carrick-on-Suir, to deepen rtain shoals in the River Suir between Carrick and Granny Ferry, so as to make it vigable for ships of a large burden up to Carrick. The tolls are levied only on vessels oming from the sea or outward bound. But the traffic is chiefly carried on in barges om Waterford, which are exempt from toll.

THE NAVIGATION.

The works were authorized in 1836. A short cut, 200 yards long, at Carrick-on-Suir, as executed, and about six acres of land reclaimed, producing a rent of about 24*l.* a ar.

Railway Companies competing with the River Suir Navigation for the Carriage of Goods.

Name of Railway Company.	Page of Report.
The Waterford and Limerick	140

This railway runs parallel to the navigable part of the River Suir from Clonmel to aterford ; the competition for traffic is chiefly with barges, which pay no toll to the avigation Company.

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71. THE ROYAL CANAL.

Belonging to the Midland Great Western Railway Company.

From Dublin to Cloondara on the Shannon, with a branch in Dublin to the Broadstone Harbour, and a branch to Longford.

(96¼ miles.)

46 canal locks.

1 ship lock.

Summit level, 324 feet above Ordnance datum.

The Royal Canal.

Midland Great Western Railway.

LENGTH OF NAVIGATION.

	Miles.	Number of Locks.
THE MAIN NAVIGATION.		
DUBLIN to CLOONDARA - - - - - - -	90¼	46
BRANCHES.		
(*a.*) THE BROADSTONE HARBOUR BRANCH (in Dublin) - -	⅜	—
(*b.*) THE LONGFORD BRANCH (from Killashee to Longford) - -	5¼	—
Total - - -	96¼	46

CAPITAL.

The capital forms part of that of the Midland Great Western Railway.
Net revenue of each of the last three years, from the Company's accounts:—

	£
1864–65 - - - - -	11,439
1865–66 - - - - -	10,681
1866–67 - - - - -	9,794
Average of three years - - -	£10,638

This amount forms part of the revenue of the Midland Great Western Railway.
The canal connects Dublin with Mullingar and Longford, and with the Shannon Navigation at Cloondara.

THE NAVIGATION.

The first Royal Canal Company was incorporated in 1789. It received before the year 1800 grants of public money to the extent of 84,000*l.*,* and from the Union to 1813, further grants of 87,692*l.*†

The Royal Canal.

On inquiries before Committees of the House of Commons in 1811 and 1813, it appeared that the Company had expended on making 46 miles of the canal from Dublin to Coolnahay 704,877*l.*,‡ of this 171,692*l.*§ had been granted as already mentioned. To provide the balance and to pay the dividends and interest which had been paid out of capital to an extent ascertained to exceed 369,231*l.*,‖ the Company had borrowed upwards of 738,462*l.*¶ and raised on share capital 276,923*l.*** In 1810 the Company had a gross income of only 13,868*l.*†† and a net income after providing for maintenance and establishment charges of only 3,813*l.*‡‡ to meet an annual charge for interest of 45,806*l.*§§ Upon the representation of the Committee of 1813 as to the insolvent state of the Company's affairs the charter was forfeited and the property transferred to the Directors-General of Inland Navigation in Ireland, who expended, between 1815 and 1822, 182,871*l.*‖‖ of public money in completing the canal from the summit level to the Shannon.

In 1818 the holders of debentures issued by the dissolved Royal Canal Company were constituted the shareholders in the new Royal Canal Company.

In 1845 the Royal Canal was purchased by the Midland Great Western Railway Company for the sum of 298,059*l.*, subject to the obligation of maintaining the navigation, and not varying the tolls without the assent of the Lord Lieutenant of Ireland. The Midland Great Western Railway Company does not act as carriers on the canal, having only a few boats used for repairs to the navigation.

* 91,000*l.*, Irish.
† 95,000*l.*, Irish.
‡ 763,617*l.*, Irish.
§ 186,000*l.*, Irish.
‖ 400,000*l.*, Irish.
¶ 800,000*l.*, Irish.
** 300,000*l.*, Irish.
†† 15,024*l.*, Irish.
‡‡ 4,131*l.*, Irish.
§§ 49,624*l.*, Irish.
‖‖ 198,110*l.*, Irish.

RELATIONS OF THE ROYAL CANAL WITH OTHER NAVIGATIONS.

The Royal Canal.

Midland Great Western Railway.

Name of Navigation.	Point of Junction.	Page of Report.
The Shannon Navigation - - - -	Termonbarry - - -	174

The Royal Canal falls into the Shannon opposite Termonbarry, and connects the part of the Shannon Navigation to the north of that point with Dublin.

RAILWAY COMPANIES COMPETING WITH THE ROYAL CANAL COMPANY FOR THE CARRIAGE OF GOODS.

Name of Railway Company.	Page of Report.
The Midland Great Western of Ireland - - - - - -	118

This railway competes with the Royal Canal for its entire length. The tolls which the railway company can charge, as owner of the canal, to the carriers who use it, are limited, and cannot be increased without the assent of the Lord Lieutenant.

72. THE FOYLE NAVIGATION.

The Foyle Navigation The Strabane Steam Navigation Company.

STRABANE to RIVER FOYLE.

(4 miles.)

2 locks.

The navigation is the property of the Marquis of Abercorn, and is leased to the Strabane Steam Navigation Company (Limited), for the unexpired part of a term of 75 years, from the 1st of July 1860. The Company having the option to take a further lease for another period of 25 years.

Financial position of the Company on the 31st of March 1867, as ascertained by the Commission:—

	£	s.	d.
Capital raised by the Company - - -	4,186	0	0
Cr. Floating assets, less floating liabilities -	415	15	11

Net revenue of Company for the last three years from the Company's accounts:—

The Foyle Navigation. The Strabane Steam Navigation Company.

	£	s.	d.
1864–5 - - - - -	206	2	6
1865–6 - - - - -	210	6	5
1866–7 - - - - -	223	3	3
Average of three years -	£213	4	0

Dividend on Ordinary Shares:—

Of the three years - - - - 5*l.* per cent.

Net revenue of the Marquis of Abercorn from tolls:—

	£	s.	d.
1864–65 - - - - -	458	0	1
1865–66 - - - - -	445	4	11
1866–67 - - - - -	449	2	6
Average of three years -	£450	15	10
Total average net revenue -	£663	19	10

THE NAVIGATION.

The works were commenced in the last century, the then Marquis of Abercorn receiving, under an Act of 1791, a grant of public money, amounting to 3,318*l.** for one-third of the expenditure of the canal. 31 G. 3. c. 45. (Irish.)

* 3,703*l.*, Irish.

RAILWAY COMPANY COMPETING WITH THE FOYLE NAVIGATION.

Name of Railway Company.	Page of Report.
The Londonderry and Enniskillen Railway - - - - -	114

The railway runs parallel to the canal and the navigable part of the River Foyle from Strabane to Londonderry.

Ballinamore and Ballyconnell Navigation (Trustees).

INLAND NAVIGATIONS UNDER LOCAL TRUSTEES.

Under the Statutes for promoting the drainage of land and the improvement of navigations and water power in connexion with drainage in Ireland, works for navigation were carried out in the three drainage districts of Ballinamore and Ballyconnell, of Lough Neagh, and of Loughs Corrib, Mask, and Carra. These works were executed by the Drainage Commissioners in Ireland, the expenses being defrayed in part by grants from general taxes, and in part by advances of public money charged on the local taxation of the districts where the navigations are situated.

73. THE BALLINAMORE AND BALLYCONNELL NAVIGATION (TRUSTEES).

The RIVER SHANNON at LEITRIM to UPPER LOUGH ERNE.

(37¾ miles.)

16 locks.

Summit level - - - 69 feet above Lough Erne.
„ - - - 82 „ the Shannon at Leitrim.

	£	s.	d.	£	s.	d.
Cost - - - - -	228,651	10	5			
Which was provided as follows:—						
Grant from imperial taxes - - - - -				198,651	10	5
Raised by local taxes:—						
Grand jury cess, co. Cavan - -	10,029	12	0			
Grand jury cess, co. Fermanagh -	2,550	18	0			
Grand jury cess, co. Leitrim -	12,720	6	0			
Grand jury cess, co. Roscommon -	4,699	4	0			
				30,000	0	0
Total - - - - - -				£228,651	10	5

The amount charged to the local taxes was levied in five years from 1860 in ten equal half-yearly instalments on particular townlands in the counties set forth in the award of the Commissioners of Public Works of the 10th of January 1860.

Income and expenditure:—

Income for three years ended the 14th of October 1867:—

	Three Years.			Average for one year.		
	£	s.	d.	£	s.	d.
Tolls and rents of canal branches - - - - -	68	5	0	22	15	0
Local taxation on land - - - - - -	133	0	0	44	6	8
Total income - - - - -	201	5	0	67	1	8

Expenditure for three years ended the 14th of October 1867 :—

Ballinamore and Ballyconnell Navigation (Trustees)

	Three Years.	Average for one year.
	£ s. d.	£ s. d.
For repairs of works, salaries of lock keeper, engineer, and secretary, law and all other expenses* - - - - -	396 15 7	132 5 2

This navigation connects the southern system of navigations, Shannon, Barrow, Grand Canal, and Royal Canal, with the northern systems of the Ulster, Tyrone, Upper and Lower Bann, Newry, and Lagan navigations.

THE NAVIGATION.

The works were executed by the Commissioners of Public Works under the Irish Drainage Acts between 1846 and 1859. They were commenced on the 30th of June 1846, and the navigations opened for traffic on the 10th of January 1860.

Relations of the Ballinamore and Ballyconnell with other Navigations.

Name of Navigation.	Point of Junction.	Page of Report.
The Shannon Navigation - - -	Leitrim - - - -	174
The Ulster Canal - - - -	Lough Erne - - -	177

The Ballinamore and Ballyconnell Navigation falls into the Shannon at the town of Leitrim near Carrick-on-Shannon. It falls into Upper Lough Erne near the entrance of the Ulster Canal into that Lough.

Railways competing with the Ballinamore and Ballyconnell Navigations.

Name of Railway Company.	Page of Report.
The Midland Great Western - - - - - - -	118
The Irish North-Western - - - - - - -	108

74. THE LOWER BANN NAVIGATION (TRUSTEES).

Lower Bann Navigation (Trustees)

From the Bridge at Coleraine in the tidal part of the River Bann to that part of Lough Neagh, which is in the counties of Antrim and Londonderry.

Length of Navigation.

In River Bann - - - - - -	31¼ miles
In Lough Neagh (from Lower Bann to entrance of Lagan Navigation) - - - - - -	19 ,,
Length (including usual route across the lough) -	50¼ ,,

5 locks.

Summit level 48 feet above Ordnance datum.

* The last account lodged with the Grand Jury of the County of Cavan gives the particulars of the expenditure for half year ending 30 June 1865, showing the Secretary and Engineer's salary 100*l.* a year; the salaries of seven lock keepers 24*l.* a year; law costs, 6*l.* 7*s.* 4*d.*; incidental expenses, 10*l.* 17*s.*; and expended on maintenance of navigation, 7*l.* 4*s.*

Upper Bann Navigation Trust.

75. THE UPPER BANN NAVIGATION (TRUSTEES).

From Blackwater Town on the River Blackwater, through Maghery Cut to that part of Lough Neagh which is in the counties of Armagh, Down, and Tyrone, including the Channel through the Bar of the Upper Bann.

Length of Navigation.

In River Blackwater - - - - - -	11¼ miles
In Lough Neagh (from Maghery Cut to entrance of Lagan Navigation) - - - - - - -	10 „
Length (including usual route across lake) -	21¼ „

No locks.

Level.

	£	s.	d.
Cost of Upper and Lower Bann Navigation -	104,374	10	4

				£	s.	d.
Which was provided as follows:—						
Grant from the imperial taxes -	-	-	-	67,237	0	4
Raised by local taxes:—	£	s.	d.			
Grand jury cess, co. Antrim -	15,032	10	4			
„ co. Armagh -	3,018	3	3			
„ co. Down -	63	17	7			
„ co. Londonderry -	12,894	17	8			
„ co. Tyrone -	6,128	1	2			
				37,137	10	0
Total - -				£104,374	10	4

The amount charged on the local taxes was levied by half-yearly instalments in five years from 1859.

Lower Bann Navigation Trust.

Income in each of three years ended the 30th of June 1867:—

	1864–65.			1865–66.			1866–67.		
	£	s.	d.	£	s.	d.	£	s.	d.
Tolls - - - - - -	90	16	8	82	4	5	94	0	11
Local taxation on land - - -	405	0	0	379	19	11	375	0	0
Amount received from Petty Sessions - -	1	13	4	1	13	4	—		
Lower Bann Steamboat Company - -	2	15	10	7	17	10	7	17	10
Half-year's rent at Portglenone - -	—			—			5	11	0
Total income - - -	500	5	10	471	15	6	482	9	9

Average of three years, 484*l.* 17*s.*

Expenditure in each of three years ended the 30th of June 1867:—

	1864–65.			1865–66.			1866–67.		
	£	s.	d.	£	s.	d.	£	s.	d.
Maintenance and repairs - - - -	154	10	0	94	12	2	163	17	3
Dredging - - - - -	26	17	6	—			—		
Dragging weeds - - - - -	6	9	0	9	6	6	—		
New cut at Antrim - - - -	—			60	15	6	—		
Salaries and incidentals - - - -	300	0	5	317	9	9	317	3	4
Dredger - - - - - -	—			—			40	0	0
Total expenditure - - -	487	16	11	482	3	11	521	0	7

Average of three years, 497*l.* 0*s.* 5*d.*

Upper Bann Navigation Trust.

Income in each of three years ended 1867 :—

	1865.	1866.	1867.
	£ s. d.	£ s. d.	£ s. d.
Tolls	63 13 4	65 9 7	64 4 2
Local taxation on land	600 0 0	400 0 0	1,200 0 0
Sand sold	4 6 0	5 10 0	14 1 10
Total income	667 19 4	470 19 7	1,278 6 0

Average of three years, 805*l.* 14*s.* 11*d.*

Expenditure in each of three years ended 1867 :—

	1865.	1866.	1867.
	£ s. d.	£ s. d.	£ s. d.
Dredging	258 2 5	291 10 1	492 8 8
Maintenance and repairs	67 5 2	29 12 3	57 1 6
Dragging weeds	11 10 3	—	—
Providing wharfs	60 0 0	—	62 15 0
New dredging barge	—	77 7 8	—
New hand dredger, 1st instalment	—	328 18 5	—
Do. 2nd do.	—	—	389 5 2
Salaries and incidentals	136 15 1	145 11 5	155 8 6
Total expenditure	533 12 11	872 19 10	1,156 18 10

Average of three years, 854*l.* 10*s.* 6*d.*

The works of both navigations were executed by the Commissioners of Public Works in Ireland, as part of the Lough Neagh drainage undertaking.

They were commenced on the 3rd of May 1847, and the navigations were opened for traffic on the 18th of February 1859.

Relations of the Lower Bann Navigation with other Navigations.

Name of Navigation.	Point of Junction.	Page of Report.
Upper Bann Navigation	Lough Neagh	168
The River Bann Navigation	Coleraine	*infra*

Lough Neagh is divided between the Lower and Upper Bann Navigation trusts ; the Lower Bann trustees having charge of the part of the lake in the counties of Antrim and Londonerry, and the Upper Bann trustees of that in the counties of Down, Armagh, and Tyrone.

The River Bann Navigation.

In 1863 the Coleraine Town Commissioners obtained an Act to improve the navigation of the tidal part of the River Bann from Coleraine to the sea; but this and similar navigations are in this report considered in the nature of harbour improvements, and not connected with railway competition. The Coleraine Commissioners have entered into a contract for dredging the ford in the river.

Relations of the Upper Bann Navigation with other Navigations.

Name of Navigation.	Point of Junction.	Page of Report.
The Lagan Navigation	Lough Neagh	159
The Newry Navigation	Lough Neagh	161
The Lower Bann Navigation	Lough Neagh	167
The Tyrone Navigation	Where it falls into the Blackwater	176
The Ulster Canal	Where it falls into the Blackwater at Moy	177

Upper and Lower Bann Navigation (Trustees).

The Lagan Navigation.

The Lagan navigation falls into Lough Neagh within the limits of the Upper Bann trust, near the town of Lurgan.

The Newry Navigation.

This navigation extends to the entrance of the Upper Bann into Lough Neagh, but as the channel which was cut through the bar of the Upper Bann is in the Lough itself, it is in the charge of the trustees of the Upper Bann, and the duty of dredging it is cast on them by the award of the Commissioners of Public Works of the 18th of February 1859, under the Irish Drainage Acts.

The Tyrone Navigation.

This navigation originally extended to Lough Neagh, but the Blackwater River from Lough Neagh to Blackwater town was placed under the trustees of the Upper Bann.

The Ulster Canal.

This canal falls into the Blackwater below the town of Moy within the Upper Bann Navigation trust.

RAILWAY COMPANIES COMPETING WITH THE UPPER AND LOWER BANN NAVIGATIONS.

Name of Railway Company.	Page of Report.
The Ulster Railway	130
The Dublin and Belfast Junction Railway	85
The Belfast and Northern Counties Railway	74

The Belfast and Northern Counties Railway competes directly with the Lower Bann Navigation, and the other railways compete with the Upper Bann Navigation, in connexion with the navigations of which it forms the connecting link.

76. THE LOUGH CORRIB NAVIGATION (TRUSTEES).

Lough Corrib Navigation (Trustees).

From Galway to Cong, with navigation channels and piers in Lough Corrib, and regulating sluices at Lough Mask and the works commenced but not completed of the Cong canal (3 miles), from Lough Corrib to Lough Mask.

Length of Navigation.

Galway Harbour to deep water in River Corrib	$\frac{3}{4}$ of a mile.
End of canal at Galway to Cong	23 miles.
Length (including usual route across the lough)	$23\frac{3}{4}$ „

2 locks.

Summit level, 30 feet above Ordnance datum.

	£	s.	d.
Cost of works	102,289	16	4
Which was provided for as follows:—			
Grant from imperial taxes	87,406	16	4
Raised by local taxes:—			
Grand jury cess — County of the town of Galway	2,396	2	6
Grand jury cess — County of Galway	7,743	12	6
Grand jury cess — County of Mayo	4,743	5	0
	14,883	0	0
Total	£102,289	16	4

The annual charges for the local taxes was levied by half-yearly instalments on particular townlands in the counties set forth in the award of the Commissioners of Public Works, June 1859, and continued during five years. Lough Corrib Navigation (Trustees)

Lough Corrib Navigation.

Income in each of three years ended the 30th of June 1867 :—

	1864–65.	1865–66.	1866–67.
	£ s. d.	£ s. d.	£ s. d.
olls or rates on boats - - - -	9 13 0	9 18 0	7 14 7
Wharfage and dock dues - - - -	22 6 8	22 15 7	31 15 0
ent - - - - - -	2 15 0	2 0 0	2 0 0
ocal taxation on counties - - -	240 0 0	240 0 0	240 0 0
Total income - - -	274 14 8	274 13 7	281 9 7

Average of three years, 276*l.* 19*s.* 3*d.*

Expenditure in each of three years ended the 30th of June 1867 :—

	1864–65.	1865–66.	1866–67.
	£ s. d.	£ s. d.	£ s. d.
aintenance and repairs - - - -	45 15 0	64 10 8	44 14 3
laries and incidentals - - - -	224 14 4	229 12 3	223 19 1
Total expenditure - - -	270 9 4	294 2 11	268 13 4

Average of three years, 277*l.* 15*s.* 2*d.*

The works include the deepening of the channels through the following shoals in ough Corrib :—

Cormorant shoal, Annadown, Lime Island, Galcarriel, Clydagh, and Lead Isle, and the annel to Long Pier.

A tidal basin and landing piers at Kilbray, Oughterrard, Long Keelkyle, Annaghen, Ballynalty, Ballykeen, and regulating sluices at Lough Mask.

The works were executed by the Commissioners of Public Works under the Irish rainage Acts. They were commenced on the 1st of January 1848, and the navigation ened for traffic on the 30th of June 1859.

A large sum was expended upon the commencement of a canal three miles long, with ree locks rising 38½ feet, from Cong on Lough Corrib to Lough Mask, but these rks were left by the Commissioners of Public Works in the incomplete state entioned in their award under the Drainage Acts.

INLAND NAVIGATIONS UNDER COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

Inland navigations were an object of the attention of the Irish Parliament so far back 1703, and from that time proceedings and grants of public money are recorded in the rnals of Parliament. The earliest Act was Stat. 2 Geo. 1. c. 12 by it Members of rliament and Justices of the Peace of neighbouring counties were empowered to settle isfactions to owners of land in case of inland navigations, and a company of undererswas constituted for rendering navigable a part of the River Shannon from Limerick Carrickdrumrusk, and power was given to constitute similar companies for other ers. 2 Geo. 1. c. 12. Irish.

In 1730 the inland navigations of Ireland were placed under public control.

The Lord Lieutenant, the Lord Chancellor, the four Archbishops of Ireland, the eaker of the Irish House of Commons, and 80 appointed Commissioners (20 for 3 Geo. 2. (Irish.) 22 Geo 3. (Irish.)

each province) were constituted the Commissioners of Inland Navigation, and certain taxes placed at their disposal, for the purpose of "encouraging tillage, employing poor, Geo. 2. "draining bogs, making canals, and making rivers navigable." The duties were hence called tillage duties. In 1752, the Commissioners were incorporated and their powers extended, and they were afterwards authorized to make over property in navigations to private undertakers with aids not exceeding one-sixth of the capital expended. In 1787, the Commissioners of Inland Navigation were dissolved and the navigations which had been constructed by the Commissioners were entrusted to parties, making certain subscriptions to complete the works

The entire expenditure of public money on inland navigations in Ireland before 1800, was:—*

	£
Issue to the Commissioners of Inland Navigations from the produce of tillage duties from 1730 to 1790	351,946
Grants of Parliament and King's letters from 1750 to 1800, including the local Lagan duties	505,436
	£857,382

In 1800 five Directors-General of Inland Navigation were appointed and 500,000*l.* granted by Parliament to complete inland navigations in Ireland.

In 1831 the Directors-General were abolished, and the navigations they had charge of came under the control of the Commissioners of Public Works.

Lower Boyne avigation Board of Works).

77. THE LOWER BOYNE NAVIGATION (BOARD OF WORKS).

From Carrickdexter, near Slane, to Drogheda.

(12¾ miles.)

7 locks.

Summit level, 62 feet above Ordnance datum.

	£
Cost (so far as ascertained)	69,231†
Which was provided as follows:—	
Grants from general and special taxes	69,231

Income in each of three years ended the 31st of March 1867:—

	1864–65.	1865–66.	1866–67.
	£ s. d.	£ s. d.	£ s. d.
Rents and tolls	366 5 7	335 17 3	304 9 8
Total income	366 5 7	335 17 3	304 9 8

Average of three years, 335*l.* 10*s.* 10*d.*

Expenditure in each of three years ended the 31st of March 1867:—

	1864–65.	1865–66.	1866–67.
	£ s. d.	£ s. d.	£ s. d.
Total expenditure	305 13 10	303 11 7	238 1 0

Average of three years, 282*l.* 8*s.* 9*d.*

This navigation connects the Upper Boyne navigation with Drogheda.

THE NAVIGATION.

The works were commenced in 1759 by the Inland Navigation Commissioners of Ireland, who expended on them †69,231*l.* from general or special taxation. In 1789 they were entrusted to the Boyne Navigation Company, who made the continuation to Navan.

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* Report from Committee on Inland Navigation, Journals of Irish House of Commons, 23d June 1800, Vol. XIX., Pt. II. p. miv.

† 75,000*l.*, Irish.

Lower Boyne Navigation (Board of Works).

In 1800 all navigations made entirely by public money were transferred by Act of arliament to the Directors-General of Inland Navigation, who took possession of the orks of the Lower Boyne.

In 1831 the navigation came under the Commissioners of Public Works, on the aboli-on of the Directors-General of Inland Navigations.

RELATIONS OF THE LOWER BOYNE NAVIGATION WITH OTHER NAVIGATIONS.

Name of Navigation.	Point of Junction.	Page of Report.
e Upper Boyne Navigation - - -	Above Carrickdexter lock - -	155
rtion of the River Boyne under the Drogheda Harbour Commissioners.	Drogheda - - - -	*Infra.*

The navigable portion of the River Boyne, from Navan to the sea, though only 24 iles in length, is under the control of three bodies; the Upper Boyne Navigation Com-ny, for six miles, from Navan to above Carrickdexter lock; the Public Works Com-issioners, from Carrickdexter to the bridge of Drogheda, 12¾ miles, and the Drogheda arbour Commissioners, from the bridge of Drogheda to the mouth of the Boyne, ; miles.

RAILWAY COMPANIES COMPETING WITH THE LOWER BOYNE NAVIGATION FOR THE CARRIAGE OF GOODS.

Name of Railway Company.	Page of Report.
e Dublin and Drogheda Railway - - - -	89

The Oldcastle branch of the Dublin and Drogheda Company is parallel to the Upper d Lower Boyne navigation.

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78. THE MAIGUE NAVIGATION (BOARD OF WORKS).

Maigue Navigation (Board of Works)

From ADARE to the RIVER SHANNON.

(8 miles.)

No locks; level.

	£
Cost of construction since 1800 - - -	3,319*
Which was provided as follows:—	
Grants through the Navigation Board or from Parliament - - - - -	3,319

This navigation was originally executed by promoters, then called undertakers, con-uted in 1715, under the first Act for promoting Inland Navigation in Ireland. In 51 it was vested in the Commissioners for Inland Navigation in Ireland; in 1800 in e Directors-General of Inland Navigation; and in 1831 in the Commissioners of Public orks. 2 Geo. I. c. 12. (Irish)

Income in each of three years ended the 31st of March 1867:—

	1864–65.	1865–66.	1866–67.
	£ s. d.	£ s. d.	£ s. d.
ts and tolls - - - -	12 2 2	13 1 6	11 5 10
Total income - - -	12 2 2	13 1 6	11 5 10

Average of three years, 12*l.* 3*s.* 2*d.*

*1800 to 1831, 2,698*l.*, Irish.
1831 to 1867, 828*l.*

Maigue Navigation (Board of Works).

Expenditure in each of three years ended the 31st of March 1867 :—

	1864–65.	1865–66.	1866–67.
Total expenditure	£ s. d. 70 2 10	£ s. d. 34 7 0	£ s. d. 34 1 0

Average of three years, 46*l.* 3*s.* 7*d.*

This navigation connects the town of Adare with the tidal part of the River Shannon

THE NAVIGATION.

The works were commenced in 1715.

Shannon Navigation (Board of Works).

79. THE INLAND PART OF THE SHANNON NAVIGATION (BOARD OF WORKS).

LIMERICK to LOUGH ALLEN, with branches to BOYLE and STROKESTOWN.

LENGTH OF NAVIGATION.

	Miles.	Locks.
MAIN NAVIGATION.		
LIMERICK to NORTHERN END of LOUGH ALLEN	143	16
BRANCH NAVIGATIONS.		
(*a.*) THE BOYLE BRANCH (from the Shannon, near Carrick-on-Shannon, to near Boyle)	9	None.
(*b.*) THE STROKESTOWN BRANCH (from the Shannon, to near Strokestown)	6	None.
Total	158	16

Summit level 161 feet above Ordnance datum.

Cost since 1800 £683,312

Which was provided as follows:— £

Grants from general taxes 410,523

Local Taxation 272,789

SHANNON NAVIGATION.

Income in each of three years ended the 31st of March 1867 :—

	1864–65.	1865–66.	1866–67.
Rents and tolls	£ s. d. 2,641 12 10	£ s. d. 2,536 16 9	£ s. d. 2,295 14 10
Total income	2,641 12 10	2,536 16 9	2,295 14 10

Average of three years, 2,491*l.* 8*s.* 1*d.*

Expenditure in each of three years ended the 31st of March 1867 :—

	1864–65.	1865–66.	1866–67.
Total expenditure	£ s. d. 2,725 14 0	£ s. d. 3,217 15 1	£ s. d. 2,587 11 8

Average of three years, 2,843*l.* 13*s.* 7*d.*

THE NAVIGATION.

The earliest Act of the Irish Parliament for inland navigation was as already noticed for making the Shannon Navigation from Limerick to Carrickdrumrusk.

In 1755 the works were undertaken by the Commissioners of Inland Navigation in Ireland, who expended a large sum from the taxes at their disposal upon them.

By an Act of the Irish Parliament of 1767 a company was established for completing a small portion of the navigation from Limerick to Killaloe, 12 miles. The company received a grant from public taxation to the extent of 15,323*l.** In 1803 the completion of the works was undertaken by the Directors-General of Inland Navigation in Ireland. About 1812, the company's rights were purchased.

In 1837 the Shannon Commission was constituted by statute, and works for improving the Shannon Navigation, and for drainage in connexion therewith, were carried out, the entire expenditure since 1800, being 683,312*l.* 5 & 6 W. c. 67.

Relations of the Shannon Navigation with other Navigations.

Name of Navigation.	Point of Junction.	Page of Report.
The Grand Canal	Shannon Harbour	156
The Royal Canal	Termonbarry	163
The Ballinamore and Ballyconnell Navigation.	Leitrim	166

The Grand Canal.

The Grand Canal crosses the Shannon at Shannon Harbour, and connects it with Dublin on the east, and with Ballinasloe on the west.

The Royal Canal.

This canal connects the upper part of the Shannon with Dublin.

The Ballinamore and Ballyconnell Navigation.

This navigation connects the Shannon with Lough Erne and the Ulster Canal.

Railway Companies competing with the Shannon Navigation for the Carriage of Goods.

Name of Railway Company.	Page of Report.
Completed Lines.	
The Great Southern and Western	100
The Waterford and Limerick	140
The Limerick and Castleconnell (with Killaloe Extension)	143
The Midland Great Western of Ireland	118
Lines commenced but not completed.	
The Shannon Extension of the Limerick and Castleconnell	143
The Parsonstown and Portumna Bridge	65
The Midland Counties and Shannon Junction	63

The Limerick and Castleconnell Railway (with the Killaloe Extension and the Shannon Extension in course of construction) is directly parallel to the Shannon. The other completed lines, by establishing routes to Dublin, Killaloe, Athlone, and Carrick-on-Shannon, compete with the water communication.

* 16,000*l.*, Irish.

Tyrone Navigation (Board of Works).

80. THE TYRONE NAVIGATION (BOARD OF WORKS).

From Coal Island to the River Blackwater.

(4½ miles.)

7 locks.

Summit level, 53 feet above Lough Neagh.

	£
Cost since 1800	31,417
Which was provided as follows :—	
Grants from general taxes	31,417

Income in each of three years ended the 31st of March 1867 :—

	1864–65.	1865–66.	1866–67.
	£ s. d.	£ s. d.	£ s. d.
Rents and tolls	321 1 5	338 16 2	304 16 8
Total income	321 1 5	338 16 2	304 16 8

Average of three years, 321*l.* 11*s.* 5*d.*

Expenditure in each of three years ended the 31st of March 1867 :—

	1864–65.	1865–66.	1866–67.
	£ s. d.	£ s. d.	£ s. d.
Total expenditure	367 3 8	357 8 5	381 3 9

Average of three years, 368*l.* 11*s.* 11*d.*

This canal was projected in conjunction with the Newry Navigation with a view to supply Dublin with Irish coal. The Maghery cut from the River Blackwater to Lough Neagh and the intervening portion of the Blackwater River, was part of the undertaking, but they now form part of the Upper Bann Navigation.

THE NAVIGATION.

The works were commenced in 1732 by the Commissioners of Inland Navigations in Ireland, and continued in their charge until 1787, when the works were transferred to parties undertaking to complete and extend the canal. In 1800 the navigation came into the hands of the Directors-General of Inland Navigation in Ireland, and between 1800 and 1831 a sum of 26,240*l.* was expended upon the works.

In 1831, on the abolition of the Directors-General of Inland Navigation, the Tyrone Navigation was transferred to the Commissioners of Public Works, in whose charge it has since continued, and a sum of 5,177*l.* has been expended by them.

Connexion of the Tyrone Navigation with other Navigations.

Name of Navigation.	Point of Junction.	Page of Report.
The Upper Bann Navigation	At Moy on the River Blackwater	

The Upper Bann Navigation connects the Tyrone Navigation with the Ulster Canal on the south and the Lough Neagh on the north.

81. THE ULSTER CANAL (BOARD OF WORKS).

LOUGH ERNE to CHARLEMONT and MOY on the BLACKWATER.

(44 miles.)

26 locks.

Summit level above Lough Erne - - - - 54 feet.
,, Lough Neagh - - - 157 feet.

	£
Cost - - - - - - -	294,272
Which was provided as follows:—	
Grant from general taxes - - - -	4,272
Share capital of the Canal Company - -	160,000
Public loans to the Canal Company - -	130,000
Total - - - -	£294,272

ULSTER CANAL.

Income from February 1865 to the 31st of March 1867:—

	1865–1867.
Total income (the Navigation practically closed during repairs) - -	£ s. d. 41 10 10

Expenditure from February 1865 to the 31st of March 1867:—

	1865–1867.
Maintenance and renewal of works - - - - - -	£ s. d. 4,800 0 0
Total expenditure - - - - - -	4,800 0 0

The Ulster Canal connects the counties of Fermanagh and Monaghan and Lough Erne with the navigations which extend from Lough Neagh to Newry and Belfast.

THE NAVIGATION.

The works were commenced by the Ulster Canal Company under an Act of 1826. Loans to the extent of 130,000*l.* were made by the Commissioners of Public Works in Ireland. In 1865 the canal was transferred to the Commissioners, in discharge of the debt, more money was expended on the canal, and it is estimated that a further sum of 4,200*l.* will be required to secure an adequate supply of water. 5 G. 4. c. 19

RELATIONS OF THE ULSTER CANAL WITH OTHER NAVIGATIONS.

The navigations in connexion with the Ulster Canal are stated in the following table:—

Name of Navigation.	Point of Junction.	Page of Report.
The Upper Boyne Navigation - -	Where it falls into the Blackwater at Moy.	155
The Ballinamore and Ballyconnell Navigation	Lough Erne - - -	166

Ulster Canal Board of Works).

The Ulster Canal falls into the navigable part of the River Blackwater, which is included in the Upper Bann Navigation Trust, and thus is connected with Lough Neagh and the navigations which centre in it. It leaves Lough Erne near the entrance of the Ballinamore and Ballyconnell Navigation.

RAILWAY COMPANIES COMPETING WITH THE ULSTER CANAL FOR THE CARRIAGE OF GOODS.

Name of Railway Company.	Page of Report.
The Ulster	130
The Irish North Western	108

The Irish North Western Railway connects the sea-port of Dundalk with large parts of the counties of Fermanagh and Monaghan, from which goods were formerly carried by the Ulster Canal to Newry and Belfast. The Ulster Railway connects the same district with Belfast. The traffic of the Ulster Canal was seriously affected by the competition of railways before it came into the hands of the Commissioners of Public Works.

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Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

Railways (Ireland) Commission.

MAP OF IRELAND

Shewing Railways and Canals

AUTHORIZED, IN PROGRESS, AND COMPLETED.

APRIL, 1868.

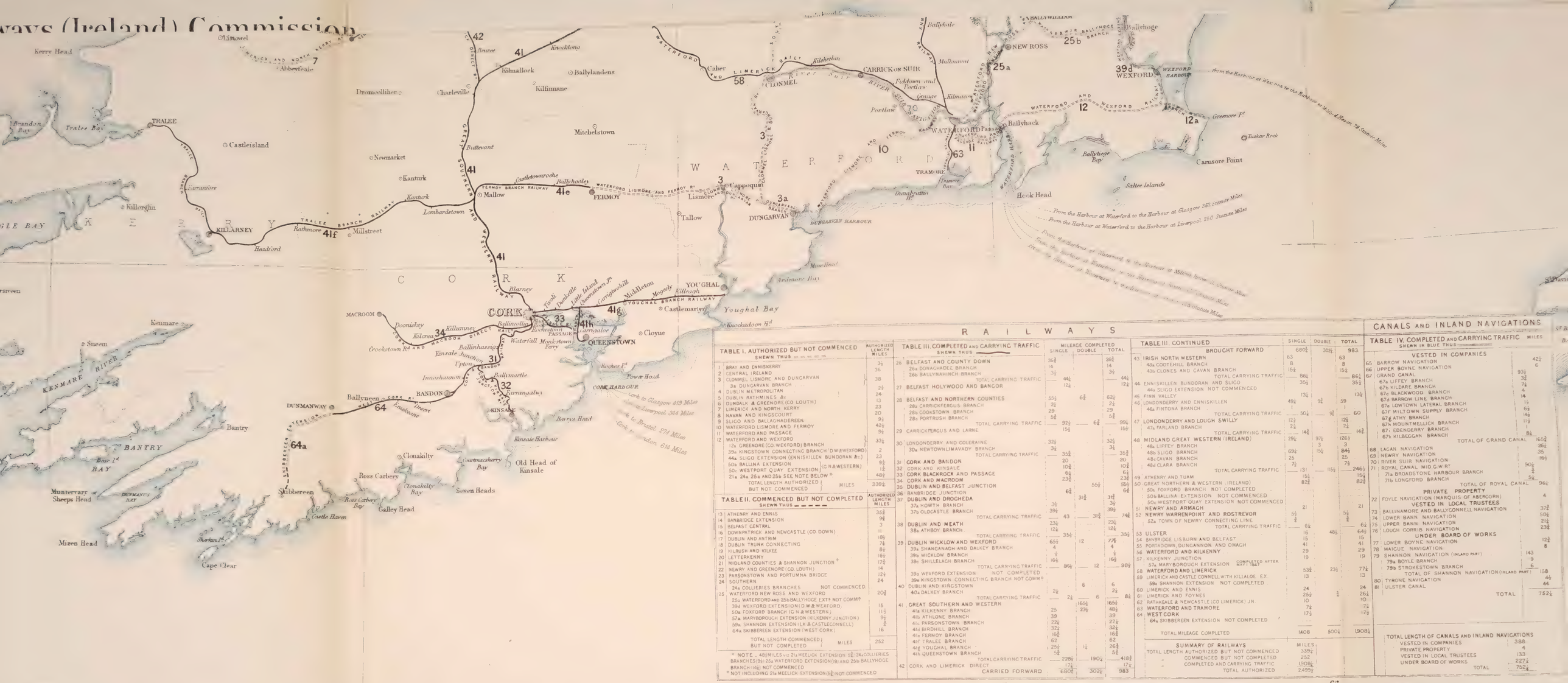
SCALE – ONE INCH = 10 MILES.

10 5 0 10 20 30 40 50 MILES

Note. The Levels given are to Ordnance Datum which is 8 feet below the mean sea Level of Ireland.

10°
9°
8°
7°
6°
SCOTLAND
Malin Head
Tory Island
Bloody Foreland
Aran Island
Dunglow
Gweebarra Bay
Donegal
Malin Bay
DONEGAL BAY
SLIGO BAY
Benwee Head
Downpatrick Hd
EROAD HAVEN
Ballycastle
Belmullet
KILLALA BAY
Killala
Easky
Sligo
Inishkea North
Inishkea South
BLACKSOD BAY
Achill Head
ACHILL ISLAND
Crossmolina
BALLINA
Ardnaree
Foxford
Aclare
Tobercurry
Ballymote
Coolaney
Collooney
Drumkeeran
Drumshaire
Swineford
Charlestown
Boyle
Roscommon
Castlerea
Ballaghaderreen
Claremorris
Westport
Newport
Mulranny
Clew Bay
Achill Sound
Belmullet
Ballina
Sligo
Donegal
Ballyshannon
Bundoran
Belleek
Enniskillen
Irvinestown
Derrygonnelly
Kiltyclogher
Manor Hamilton
Belcoo
Pettigoe
Lack
Ederny
Fintona Junction
Fintona
Dromore
Omagh
Drumquin
Castlederg
Newtown Stewart
Strabane
Lifford
Castlefinn
Raphoe
Stranorlar
Ballybofey
Letterkenny
Pluck
Cuttymanhill
Carrigans
Londonderry
Waterside
Bridge End
Farland
Rathmelton
Milford
Kerrykeel
Fanad Head
Lough Swilly
Lough Foyle
Inch Island
Moville
Greencastle
Inishowen Hd
Cardonagh
Giants Causeway
Portrush
Port Stewart
Bushmills
Ballycastle
Benmore or Fair Hd
Rathlin Island
Coleraine
Ballymena
Broughshane
Ballyclare
Carrickfergus
Belfast
Belfast Lough
Bangor
Newtownards
Donaghadee
Portaferry
Strangford Lough
Comber
Dundrum
Downpatrick
Ardglass
Newcastle
Dundrum Bay
Kilkeel
Warrenpoint
Rostrevor
Newry
Armagh
Portadown
Lurgan
Lisburn
Belfast
Antrim
Ballymena
Larne
Portglenone
Maghera
Tobermore
Draperstown
Castle Dawson
Magherafelt
Moneymore
Cookstown
Dungannon
Coalisland
Stewartstown
Omagh
Enniskillen
Lough Erne
Lough Neagh
Lough Beg
Upper Lough Erne
Lower Lough Erne
Clogher
Fivemiletown
Brookeborough
Maguires Br
Belcoo
Swanlibar
Ballinamore
Leitrim
Carrick on Shannon

CLEW BAY
Clare Island
Old Head
Lousturgh
Inishturk
WESTPORT
50
50c
CASTLEBAR
50a
Manulla Junction
Balla
Kilkelly
Kiltamagh
Frenchpark
Elphin
Drumod
Drumlish
Kilnaleck
Ballyjamesduff
Virginia
Nobber
Dunlavin
Clogher Head
Strokestown
Newtonforbes
Granard
Ballywillan
ROSCOMMON
79
Ballyhaunis
50
Castlereagh
Clare
GREAT NORTHERN AND WESTERN JOINT RAILWAY
LONGFORD
48b
48c
71b
Edgeworthstown
OLDCASTLE
37b
Kells
Oldcastle
Wilkinstown
Navan
DROGHEDA
37
Laytown
Ballbriggan
Skerries
Ballymore
Ballindine
LOUGH CARRA
LOUGH MASK
Ballinrobe
Dunmore
Glennamaddy
Castlepollard
Multifarnham
Ballynacarrigy
Cloghugh
Ballymahon
Dunsmon
ROSCOMMON
Ballymurray
Knockcroghery
71
LOUGH REE
Corca
Shrule
Clifden
Beadford
LOUGH CORRIB
Oughterard
Ballymore
Mount Bellew
MULLINGAR
Killucan
Hill of Down
Kinnegad
Batterstown
Donabate
Lambay Is.
Malahide
Rush & Lusk
Lusk
WEST MEATH
TUAM
49
Ballyglunin
ATHLONE
50
Streamstown
Moate
Kilbeggan
67k
Clara
Edenderry
67i
Philipstown
Moy Valley
Enfield
Ferns Lock
Kilcock
Dunboyne
Maynooth
Leixlip
Clonsilla
Blanchardstown
Finglas
Glasnevin
DUBLIN
Portmarnock
Junction St.
Howth
DUBLIN BAY
Kingstown
Dunleary
Blackrock
Booterstown
Merrion
Sandymount
Ringsend
Pembroke
Donnybrook
Rathmines
Rathgar
Terenure
Harold's Cross
Kimmage
Drumcondra
Glasnevin
Phoenix Park
Inchicore
Kilmainham
Islandbridge
Chapelizod
Lucan
Leixlip
Maynooth
Hazelhatch and Celbridge
Straffan
Ballinasloe
Woodlawn
Ahascragh
Monivea
Athenry
Ballyglunin
48
Prospect Branch Railway
Tullamore Branch Railway
Philipstown
Blackwood Reservoir
67e
67c
67f
Robertstown
Cross Canal
Grand Canal
Broadstone
Glasnevin
Ballybrack
Shanganagh Junction
Bray
Enniskerry
Great Southern & Western Railway
Main Line
Cherryville Junction
Newbridge
Naas
Sallins
Clane
Prosperous
Rathangan
Monasterevin
Kildare
67b
Kilcullen
Blessington
Ballymore Eustace
Poulaphuca Bridge
Delganey
Kilkool
Newcastle
39
Dunlavin
WICKLOW
Wicklow Junction
Rathnew
WICKLOW
39b
Wicklow Head
Gleneale
Rathdrum
Avoca
Mizen Head
Shillelagh
Arklow
Hacketstown
Aughrim
39c
Tinahely
SHILLELAGH
Wexford Railway
Dublin Wicklow & Wexford Railway
Gorey
Camolin
Ferns
Cahore Point
Carnew
Clonegale
Newtownbarry
CARLOW
Bagenalstown
Leighlinbridge
Milford
Tullow
Baltinglass
Hacketstown
Abbeyleix
Ballinakill
Attanagh
Durrow
Castlecomer
Ballinagget
Templemore
Clonakenny
Roscrea & Parsonstown Jn.
Roscrea
Mountrath & Castletown
Mountrath
Stradbally
Ballytore
Athy
Grade 180
Maryborough
Mountmellick
Portarlington
Cherryville Junction
Monasterevin
Kildare
Newbridge
Naas
Sallins
Clane
Prosperous
Rathangan
Edenderry
Philipstown
Tullamore
Clara
Banagher
Shannon Harbour
Cloghan
Frankford
Killimor
Meelick
Portumna
Woodford
Birr or Parsonstown
Parsonstown Branch Railway
Roscrea
Nenagh
Birdhill
Limerick Junction
Tipperary
Thurles
Cashel
Fethard
Goold's Cross
Templemore
Clonakenny
Ballybrophy
Borris
Bennetts Bridge
Graiguenamanagh
Thomastown
Tide flows to this point
Mullinavat
Waterford & Kilkenny Railway
Great Southern & Western Railway
Dublin & Kingstown Railway
Grand Canal
Royal (Camps) Canal
Circular Road
Longford Branch Railway
Midland Great Western Railway of Ireland
Great Northern & Western Joint Railway
Athenry & Tuam Railway
Athenry & Ennis Railway
Ballinasloe & Athenry Railway
Great Southern & Western Railway
Midland Great Western Railway
Great Northern Railway
Dublin & Drogheda Railway
Dublin & Belfast Junction Railway
Dublin & Wicklow Railway
Dublin Wicklow & Wexford Railway
Wexford Railway
Waterford & Kilkenny Railway
Great Southern & Western Railway
Athenry & Ennis Railway
Limerick & Castle Connell Railway
Limerick & Foynes Railway
Limerick & Kerry Railway
Limerick & Ballybunion Railway
Limerick & Tralee Railway
Limerick & Waterford Railway
Great Southern & Western Railway
Limerick & Ennis Railway
Limerick & Sligo Railway
Great Southern & Western Railway
Limerick & Kerry


ways (Ireland) Commission
Kerry Head
Tralee Bay
Brandon Bay
TRALEE
Castleisland
Killorglin
KILLARNEY
Headford
Rathmore
Millstreet
Kanturk
Lombardstown
Mallow
Buttevant
Newmarket
Charleville
Bruree
Kilmallock
Knocklong
Ballylandens
Kilfinnane
Dromcollihen
Mitchelstown
Castletownroche
Ballyhooley
FERMOY
Lismore
Tallow
Cappoquin
DUNGARVAN
DUNGARVEN HARBOUR
Ardmore Bay
Youghal Bay
YOUGHAL
Castlemartyr
Cloyne
Middleton
Midleton
Carrigtwohill
Queenstown Jct.
Little Island
Glounthaune Jct.
Dunkettle
Tivoli
Blarney
CORK
QUEENSTOWN
Cobh
Roche's Pt.
Power Head
CORK HARBOUR
Cork to Glasgow 413 Miles
to Liverpool, 344 Miles
to Bristol, 271 Miles
Cork to London, 614 Miles
Barrys Head
Kinsale Harbour
Old Head of Kinsale
Courtmacsherry Bay
Seven Heads
Clonakilty
Clonakilty Bay
Ross Carbery
Ross Carbery Bay
Galley Head
Castle Haven
Skibbereen
Sherkin Is.
Cape Clear
Mizen Head
Muntervary or Sheeps Head
Bantry
Bear Is.
BEAR BAY
BANTRY
KENMARE RIVER
Kenmare
Sneem
Derrynane
Caher
CARRICK on SUIR
CLONMEL
Kilsheelan
Fiddown and Portlaw
Portlaw
Waterford
WATERFORD
Passage
Ballyhale
Mullinavat
Kilmacow
Gowran
Tramore
Tramore Bay
Dunabrattin Hd.
Hook Head
Ballyhack
NEW ROSS
Ballyhoge
WEXFORD
WEXFORD HARBOUR
Ballytiege Bay
Greenore Pt.
Tuskar Rock
Carnsore Point
Saltee Islands
From the Harbour at Waterford to the Harbour at Glasgow 362 Statute Miles
From the Harbour at Waterford to the Harbour at Liverpool, 280 Statute Miles
From the Harbour at Waterford to the Harbour at Milford Haven, 78 Statute Miles
From the Harbour at Waterford to the Harbour at Swansea, 104 Statute Miles
From the Harbour at Waterford to the Harbour at Fishguard, 108 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 194 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 205 Statute Miles
From the Harbour at Waterford to the Harbour at Portland, 215 Statute Miles
From the Harbour at Waterford to the Harbour at Falmouth, 228 Statute Miles
From the Harbour at Waterford to the Harbour at Penzance, 240 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 250 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 252 Statute Miles
From the Harbour at Waterford to the Harbour at Bristol, 271 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 272 Statute Miles
From the Harbour at Waterford to the Harbour at Dartmouth, 284 Statute Miles
From the Harbour at Waterford to the Harbour at Torquay, 288 Statute Miles
From the Harbour at Waterford to the Harbour at Teignmouth, 290 Statute Miles
From the Harbour at Waterford to the Harbour at Exmouth, 292 Statute Miles
From the Harbour at Waterford to the Harbour at Lyme Regis, 294 Statute Miles
From the Harbour at Waterford to the Harbour at Poole, 304 Statute Miles
From the Harbour at Waterford to the Harbour at Southampton, 320 Statute Miles
From the Harbour at Waterford to the Harbour at Portsmouth, 324 Statute Miles
From the Harbour at Waterford to the Harbour at Newhaven, 350 Statute Miles
From the Harbour at Waterford to the Harbour at Dover, 390 Statute Miles
From the Harbour at Waterford to the Harbour at Ramsgate, 400 Statute Miles
From the Harbour at Waterford to the Harbour at Margate, 402 Statute Miles
From the Harbour at Waterford to the Harbour at Harwich, 450 Statute Miles
From the Harbour at Waterford to the Harbour at Yarmouth, 470 Statute Miles
From the Harbour at Waterford to the Harbour at Lowestoft, 472 Statute Miles
From the Harbour at Waterford to the Harbour at Hull, 520 Statute Miles
From the Harbour at Waterford to the Harbour at Goole, 530 Statute Miles
From the Harbour at Waterford to the Harbour at Grimsby, 540 Statute Miles
From the Harbour at Waterford to the Harbour at Boston, 560 Statute Miles
From the Harbour at Waterford to the Harbour at Wisbech, 570 Statute Miles
From the Harbour at Waterford to the Harbour at Lynn, 580 Statute Miles
From the Harbour at Waterford to the Harbour at Ipswich, 590 Statute Miles
From the Harbour at Waterford to the Harbour at Colchester, 600 Statute Miles
From the Harbour at Waterford to the Harbour at Maldon, 610 Statute Miles
From the Harbour at Waterford to the Harbour at Sheerness, 620 Statute Miles
From the Harbour at Waterford to the Harbour at Gravesend, 630 Statute Miles
From the Harbour at Waterford to the Harbour at London, 640 Statute Miles
From the Harbour at Waterford to the Harbour at Rochester, 650 Statute Miles
From the Harbour at Waterford to the Harbour at Chatham, 652 Statute Miles
From the Harbour at Waterford to the Harbour at Sittingbourne, 660 Statute Miles
From the Harbour at Waterford to the Harbour at Faversham, 670 Statute Miles
From the Harbour at Waterford to the Harbour at Whitstable, 672 Statute Miles
From the Harbour at Waterford to the Harbour at Canterbury, 680 Statute Miles
From the Harbour at Waterford to the Harbour at Deal, 690 Statute Miles
From the Harbour at Waterford to the Harbour at Dover, 700 Statute Miles
From the Harbour at Waterford to the Harbour at Folkestone, 710 Statute Miles
From the Harbour at Waterford to the Harbour at Hastings, 720 Statute Miles
From the Harbour at Waterford to the Harbour at Rye, 730 Statute Miles
From the Harbour at Waterford to the Harbour at Newhaven, 740 Statute Miles
From the Harbour at Waterford to the Harbour at Brighton, 750 Statute Miles
From the Harbour at Waterford to the Harbour at Shoreham, 760 Statute Miles
From the Harbour at Waterford to the Harbour at Littlehampton, 770 Statute Miles
From the Harbour at Waterford to the Harbour at Bognor, 780 Statute Miles
From the Harbour at Waterford to the Harbour at Chichester, 790 Statute Miles
From the Harbour at Waterford to the Harbour at Portsmouth, 800 Statute Miles
From the Harbour at Waterford to the Harbour at Southampton, 810 Statute Miles
From the Harbour at Waterford to the Harbour at Poole, 820 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 830 Statute Miles
From the Harbour at Waterford to the Harbour at Portland, 840 Statute Miles
From the Harbour at Waterford to the Harbour at Lyme Regis, 850 Statute Miles
From the Harbour at Waterford to the Harbour at Exmouth, 860 Statute Miles
From the Harbour at Waterford to the Harbour at Teignmouth, 870 Statute Miles
From the Harbour at Waterford to the Harbour at Torquay, 880 Statute Miles
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From the Harbour at Waterford to the Harbour at Plymouth, 1000 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 1010 Statute Miles
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From the Harbour at Waterford to the Harbour at Milford Haven, 1170 Statute Miles
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From the Harbour at Waterford to the Harbour at Plymouth, 1900 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 1910 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 1920 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 1930 Statute Miles
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From the Harbour at Waterford to the Harbour at Weymouth, 1990 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 2000 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 2010 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 2020 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 2030 Statute Miles
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From the Harbour at Waterford to the Harbour at Swansea, 3860 Statute Miles
From the Harbour at Waterford to the Harbour at Milford Haven, 3870 Statute Miles
From the Harbour at Waterford to the Harbour at Fishguard, 3880 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 3890 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 3900 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 3910 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 3920 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 3930 Statute Miles
From the Harbour at Waterford to the Harbour at Penzance, 3940 Statute Miles
From the Harbour at Waterford to the Harbour at Falmouth, 3950 Statute Miles
From the Harbour at Waterford to the Harbour at Swansea, 3960 Statute Miles
From the Harbour at Waterford to the Harbour at Milford Haven, 3970 Statute Miles
From the Harbour at Waterford to the Harbour at Fishguard, 3980 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 3990 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 4000 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 4010 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 4020 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 4030 Statute Miles
From the Harbour at Waterford to the Harbour at Penzance, 4040 Statute Miles
From the Harbour at Waterford to the Harbour at Falmouth, 4050 Statute Miles
From the Harbour at Waterford to the Harbour at Swansea, 4060 Statute Miles
From the Harbour at Waterford to the Harbour at Milford Haven, 4070 Statute Miles
From the Harbour at Waterford to the Harbour at Fishguard, 4080 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 4090 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 4100 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 4110 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 4120 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 4130 Statute Miles
From the Harbour at Waterford to the Harbour at Penzance, 4140 Statute Miles
From the Harbour at Waterford to the Harbour at Falmouth, 4150 Statute Miles
From the Harbour at Waterford to the Harbour at Swansea, 4160 Statute Miles
From the Harbour at Waterford to the Harbour at Milford Haven, 4170 Statute Miles
From the Harbour at Waterford to the Harbour at Fishguard, 4180 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 4190 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 4200 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 4210 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 4220 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 4230 Statute Miles
From the Harbour at Waterford to the Harbour at Penzance, 4240 Statute Miles
From the Harbour at Waterford to the Harbour at Falmouth, 4250 Statute Miles
From the Harbour at Waterford to the Harbour at Swansea, 4260 Statute Miles
From the Harbour at Waterford to the Harbour at Milford Haven, 4270 Statute Miles
From the Harbour at Waterford to the Harbour at Fishguard, 4280 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 4290 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 4300 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 4310 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 4320 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 4330 Statute Miles
From the Harbour at Waterford to the Harbour at Penzance, 4340 Statute Miles
From the Harbour at Waterford to the Harbour at Falmouth, 4350 Statute Miles
From the Harbour at Waterford to the Harbour at Swansea, 4360 Statute Miles
From the Harbour at Waterford to the Harbour at Milford Haven, 4370 Statute Miles
From the Harbour at Waterford to the Harbour at Fishguard, 4380 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 4390 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 4400 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 4410 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 4420 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 4430 Statute Miles
From the Harbour at Waterford to the Harbour at Penzance, 4440 Statute Miles
From the Harbour at Waterford to the Harbour at Falmouth, 4450 Statute Miles
From the Harbour at Waterford to the Harbour at Swansea, 4460 Statute Miles
From the Harbour at Waterford to the Harbour at Milford Haven, 4470 Statute Miles
From the Harbour at Waterford to the Harbour at Fishguard, 4480 Statute Miles
From the Harbour at Waterford to the Harbour at Weymouth, 4490 Statute Miles
From the Harbour at Waterford to the Harbour at Plymouth, 4500 Statute Miles
From the Harbour at Waterford to the Harbour at Ilfracombe, 4510 Statute Miles
From the Harbour at Waterford to the Harbour at Barnstaple, 4520 Statute Miles
From the Harbour at Waterford to the Harbour at Padstow, 4530 Statute Miles
From the Harbour at Waterford to the Harbour at Penzance, 4540 Statute Miles
From the Harbour at Waterford to the Harbour at Falmouth, 4550 Statute Miles

SECTIONS, &c.

I.

GRADIENT SECTIONS OF RAILWAYS COMPLETED AND CARRYING TRAFFIC.

II.

SECTIONS OF RAILS SHEWING THE PREVAILING TYPE OF THE VARIOUS COMPANIES.

III.

SECTIONS OF CANALS AND RIVER NAVIGATIONS.

IV.

STANDARD TYPES OF LOCOMOTIVE ENGINES.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

22051. 1868.

Railways (Ireland) Commission,
2, Victoria Street (Abbey End),
Westminster, S.W.
15th June 1868.

Sir,

I am directed by the Commissioners for inquiring into Railways in Ireland to transmit for the information of the Lords Commissioners of Her Majesty's Treasury Gradient Sections of the Railways completed and carrying traffic, Sections of Rails showing the prevailing type of the various Companies, Sections of Canals and River Navigations, and Standard types of Locomotive Engines.

The Gradient Sections (Plate I.) have been compiled from the tracings of working Sections, supplied by the Companies, where these were available, and in other cases from the Parliamentary Sections lodged in the Houses of Parliament. The heights have been reduced to the uniform datum of 100 feet below the datum adopted in the Ordnance Survey (8 feet below the mean sea level of Ireland).

The types of Rails (Plate II.) have been prepared from Sections furnished by the different Companies.

The Sections of Canals and River Navigations (Plate III.) have been compiled from tracings of Sections supplied by the Companies, where they were available, and in other cases from the Ordnance Survey and other public documents. The datum taken for these Sections is that adopted in the Ordnance Survey.

The Standard types of Locomotive Engines (Plate IV.) have been prepared from the Drawings supplied by the Companies.

I have the honour to be,
Sir,
Your obedient Servant,
W. NEILSON HANCOCK,
Secretary.

George Sclater-Booth, Esq., M.P.,
Secretary,
The Treasury.

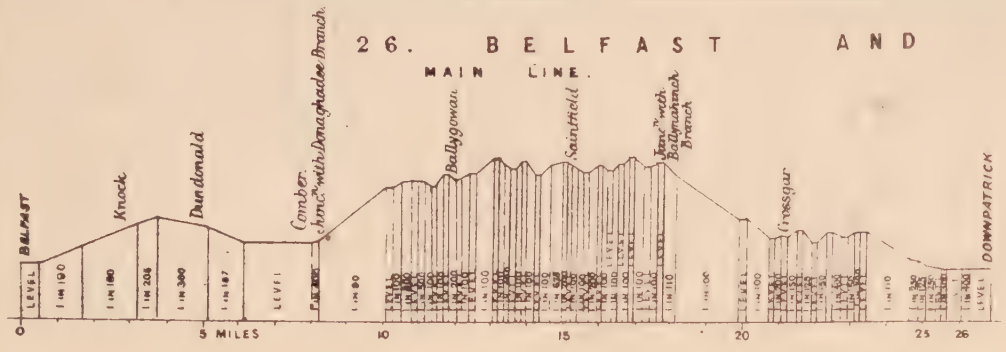
Railways

GRADIENT SECTION OF RAILWAY

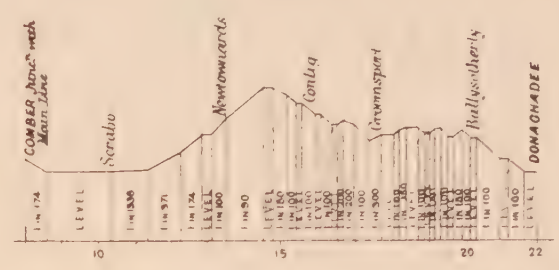
APR

Horizontal Scale 3/16 of an Inch to the Mile ___ Vertical Scale 400 Feet to the Inch.

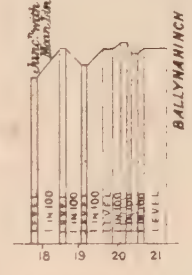
26. BELFAST AND COUNTY DOWN.
MAIN LINE.



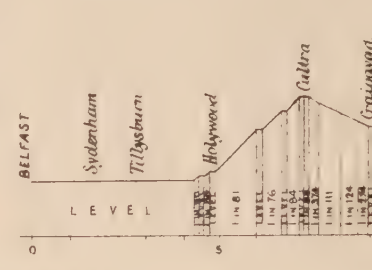
26a. DONAGHADEE BRANCH.



26b BALLYNAHINCH BRANCH.

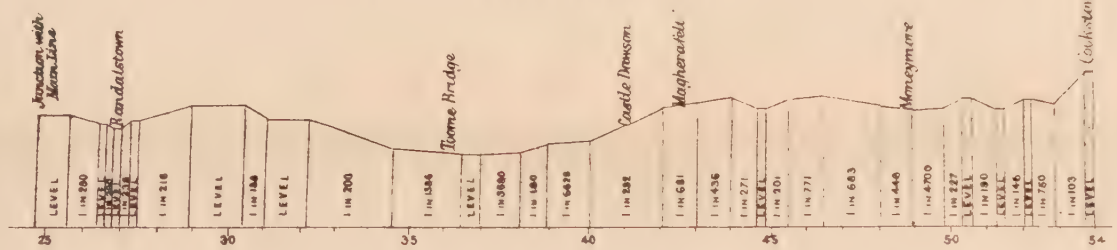


27. BELFAST HOLY
AND BANGOR



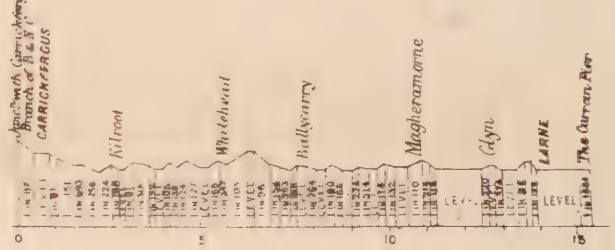
BELFAST AND NORTHERN COUNTIES.

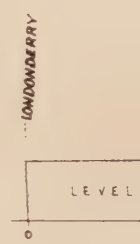
28 b. COOKSTOWN BRANCH.



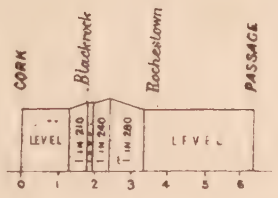
28c PORTRUSH BRANCH

29. CARRICKFERGUS AND LARNE.

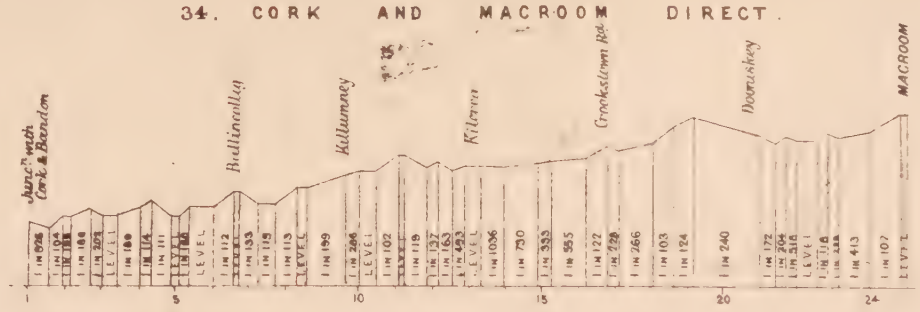




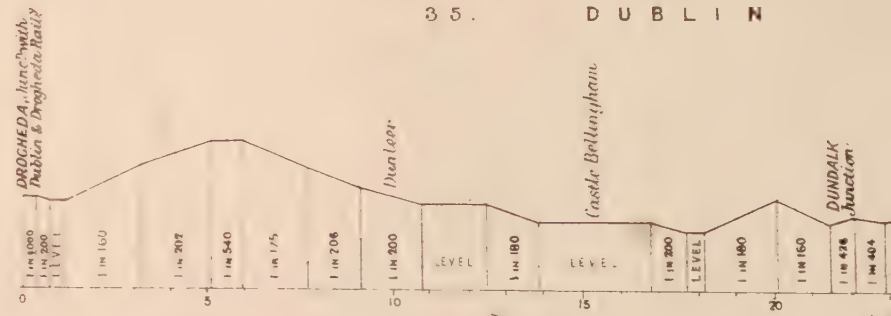
33. CORK BLACKROCK AND PASSAGE.



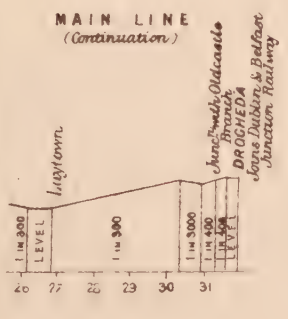
34. CORK AND MACROOM DIRECT.



35. DUBLIN

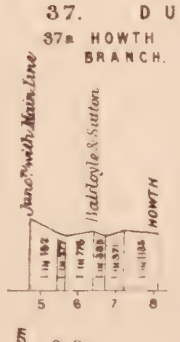


MAIN LINE (Continuation)

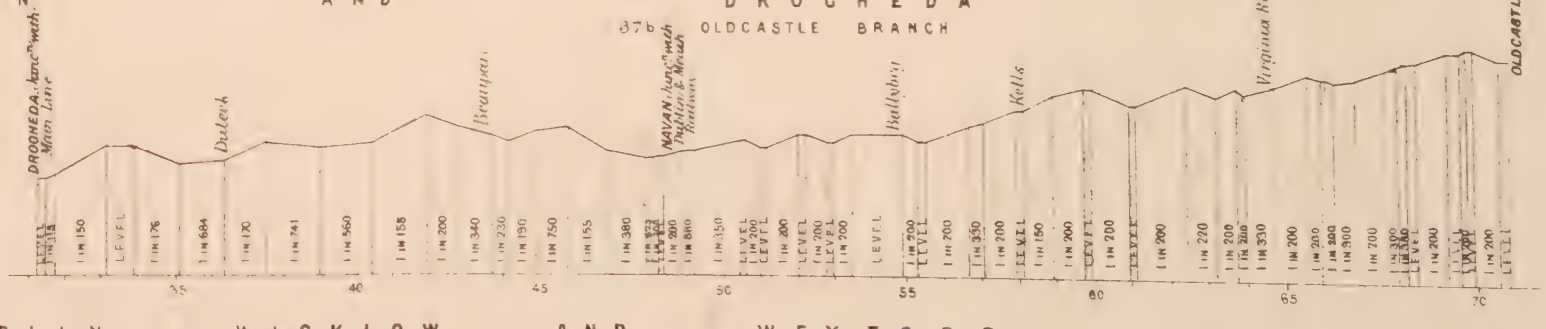


37. DUBLIN AND DROGHEDA

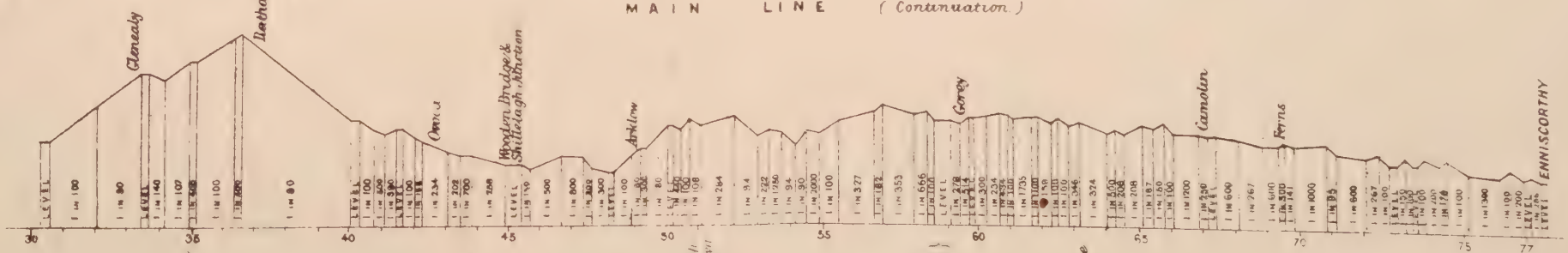
37a HOWTH BRANCH.



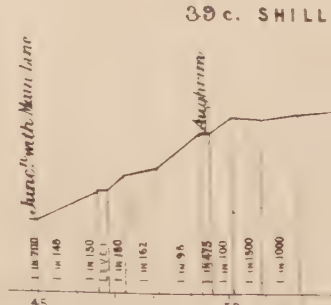
37b OLDCASTLE BRANCH



39. DUBLIN WICKLOW AND WEXFORD.
MAIN LINE (Continuation)



39c. SHILL



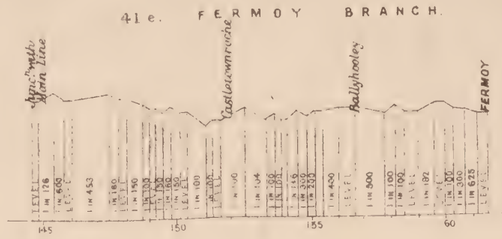
41. GREAT SOUTH
MAIN

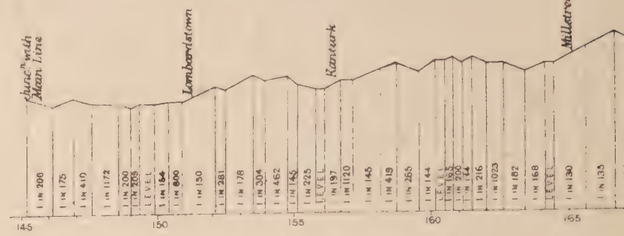
41a. KILKENNY BRANCH. (Continuation.)

41b.

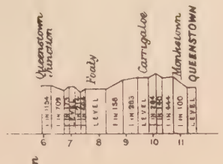
41d. BIRDHILL BRANCH. (Continuation.)

41e. FERMOY BRANCH.

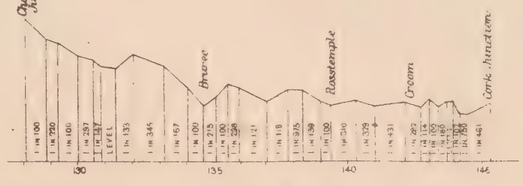




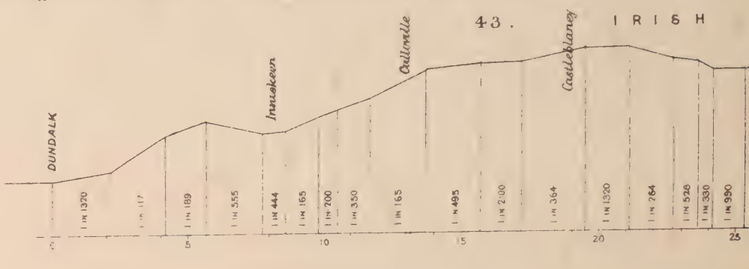
41h. QUEENSTOWN BRANCH.



42. CORK AND LIMERICK DIRECT.

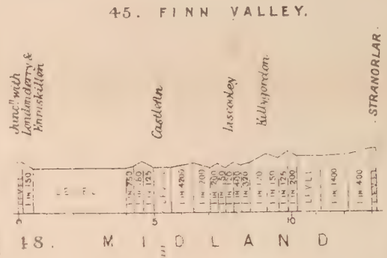


43. IRISH

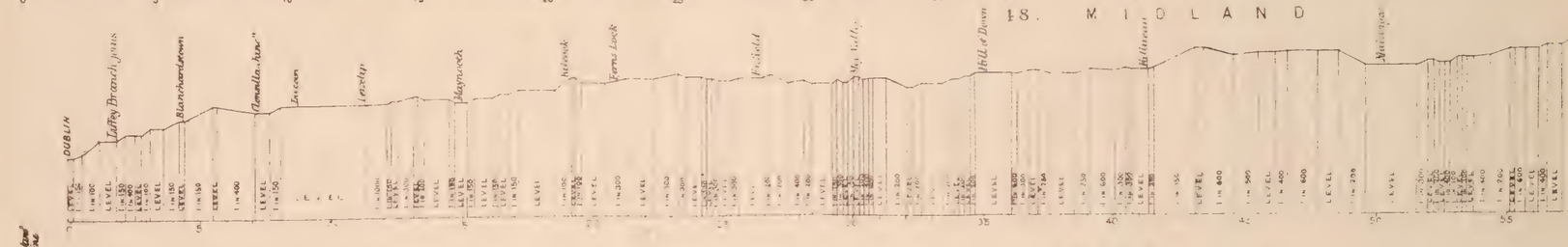


44. ENNISKILLEN BUNDORAN AND SLIGO.

45. FINN VALLEY.



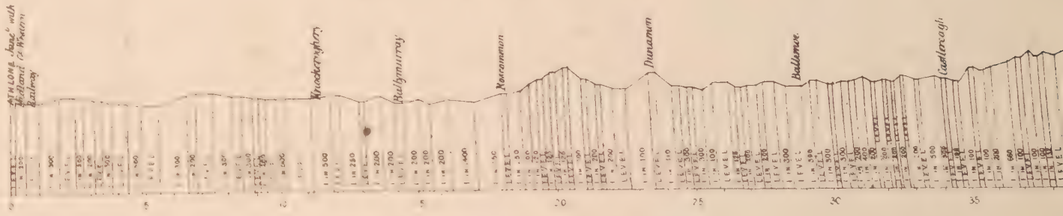
48. MIDLAND



48b. SLIGO BRANCH.

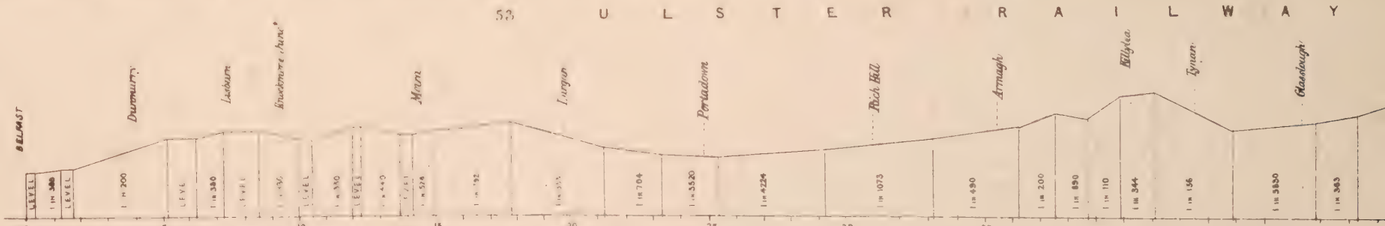
49 ATHENRY AND TUAM

50 GREAT NORTH

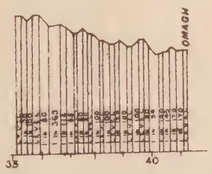


52 NEWRY AND WARRENPOINT

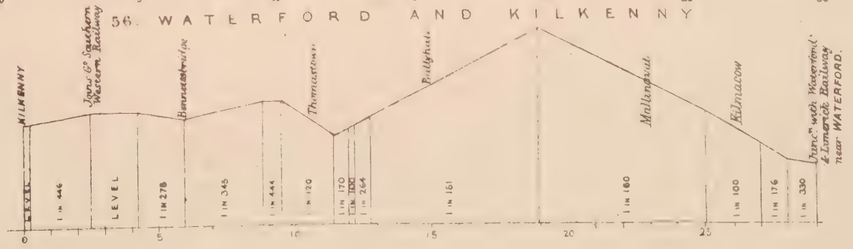
53 ULSTER RAILWAY



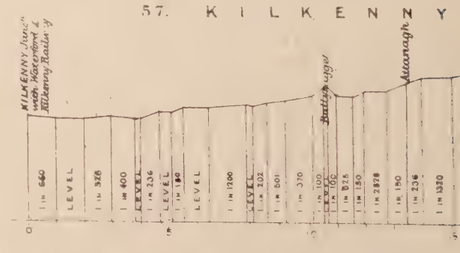
55 PORTADOWN DUNGANNON AND OMAGH. (Continuation)



56. WATERFORD AND KILKENNY



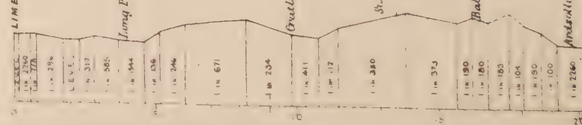
57. KILKENNY



58. WATERFORD AND LIMERICK (Continuation)

59 LIMERICK & CASTLECONNEL AND KILLALOE EXTENSION.

60. LIMERICK AND ENNIS



reland) Commission.

PLATE 1.

S COMPLETED AND CARRYING TRAFFIC

IL, 1868.

Datum Line 100 Feet below Ordnance Datum which is 8 Feet below the mean Sea Level, and 20.90 Ft below a mark on the Base of the Poolbeg Lighthouse at Dublin.

61. LIMERICK AND FOYNES.

LIMERICK
Patrick Well
Cork Junction
Adare
Ballingrane Junction with Rathkeale & Newcastle Railway
Askeaton
FOYNES

62. RATHKEALE & NEWCASTLE.

Junction with Limerick & Foynes Railway
Rathkeale
Ardagh
NEWCASTLE

63. WATERFORD & TRAMORE.

WATERFORD
TRAMORE

64. WEST CORK.

Junction with Cork & Bandon
Dysert
Enniskeane
Ballyneen
DUNMANWAY

57a. MARLBOROUGH EXTENSION. NOT OPENED TILL AFTER MAY 1st 1864

Abbeyleix
MARLBOROUGH

CLONES
Monaghan
Smithboro'

54. BANBRIDGE LISBURN & BELFAST JUNCTION.

LIMERICK Junction with Foynes & Ennis Railway
Killonan Junction with Limerick & Castleconnel Railway
Bohor
Dromkeen
Pallas
Oola
Limerick & Foynes & Limerick Junction & Great Southern & Western
Tipperary
Banoha
Caher
Clonmel
Kilsheelan

KNOCKMORE Junction with Ulster Railway
Hillsborough
BANBRIDGE

PORTADOWN Junction with Ulster Railway
Derry Line Old way (Disused for Passengers)
Annaghmore
Veners Bridge
Trew & Moy
Dungannon
Donaghmore
Pomeroy
Cookstown
Six Mile Cross
Beragh

55. PORTADOWN DUNGANNON AND OMAGH.

51. NEWRY AND ARMAGH RAILWAY.

NEWRY
Goraghwood Junction
Markethill
Hamilton Barn
ARMAGH Junction with Ulster Railway

Ballyhaunis
Claremorris
Castlebar
WESTPORT

49. GREAT WESTERN MAIN LINE.

Kiltree Junction
Ballymote
Collooney
Ballysadare
SLIGO

Junction with Great Western of Williamstown to Great Western at Half
Foxford
Manulla Junction
Claremorris
Castlebar

48c. CAVAN BRANCH.

Float
Ballymillan
Grassdorny
CAVAN

48d. CLARA BRANCH.

STREAMSTOWN Junction with Main Line
CLARA

48a. LIFFEY BRANCH.

Junction with Main Line
NORTH WALL TERMINUS

Streamstown
Moate
Athlone
Athenry Junction with Athenry & Tuam Railway
Oranmore
Ballinasloe
Woodlawn
GALWAY

Cattymanhill
Portumna
Strabane Junction with Finn Valley Railway
Scarriff
Victoria Bridge
Newtown Stewart
Omagh
Junction with Portadown Dungannon & Omagh
Dromore Road
Bellisk
Junction with Enniskillen Rundown & Sligo
Ballinamallard
ENNISKILLEN.
Fintona Junction
Fintona
LONDONDERRY
Bridge End
Burntfoot
Junction with Fair Land Branch
Inch Road
Fahan
BUNCRANA
Junction with Main Line
FARLAND

46. LONDONDERRY MAIN LINE.

46a FINTONA BRANCH.

47. LONDONDERRY & LOUGH SWILLY MAIN LINE.

47a FARLAND BRANCH.

Shantona Junction with Cootehill Branch
Monaghan Road
Newtillies
Junction with Ulster Railway
CLONES Junction with Cavan Branch
Newtown Butler
Lisnaskea
Maguirus Bridge
Lisbellaw
ENNISKILLEN

43. WESTERN MAIN LINE.

43a COOTEHILL BRANCH.

SHANTONA Junction
Rockcorry
COOTEHILL

43b. CLONES AND CAVAN BRANCH.

CLONES Junction with Main Line
Belturbet
CAVAN

41f. TRALEE BRANCH.

Rathmore
Headford
Killarney
Farranfore
TRALEE

41g. YOUGHAL BRANCH.

Junction with Great Southern & Western
CORK
Tivoli
Dunkettle
Little Island
Junction with Queenstown Branch
Carrigtwohill
Middleton
Mogeely
Killeagh
YOUGHAL

41e. THOLE BRANCH.

Clara
Prospect
THOLE Junction with Midland and Great Western

41c. PARSONSTOWN BRANCH.

Junction with Maryville
Roscrea Junction with Birdhill Extension
PARSONSTOWN

41d. BIRDHILL BRANCH.

Junction with Parsonstown Branch

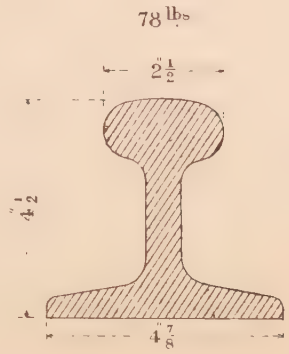
Railways

SE

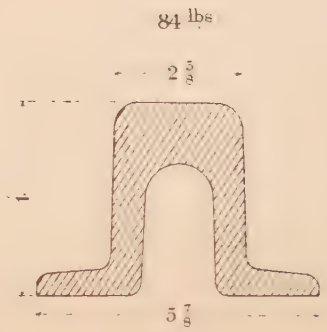
R A

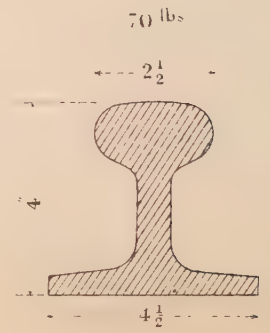
Scale 3, Ins. = 1 Foot.

Shewing the preva

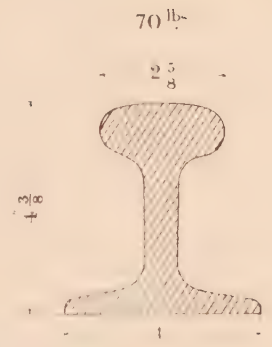


26. BELFAST AND COUNTY DOWN.

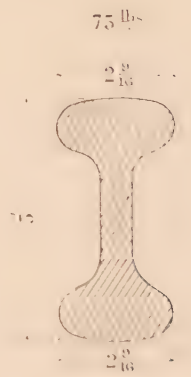




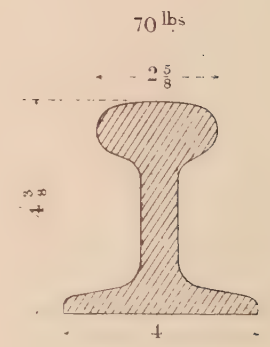
27. BELFAST HOLYWOOD AND BANGOR.

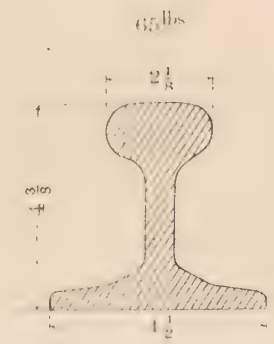


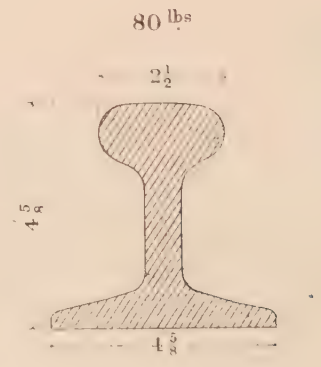
29. CARRICKFERGUS AND LARNE

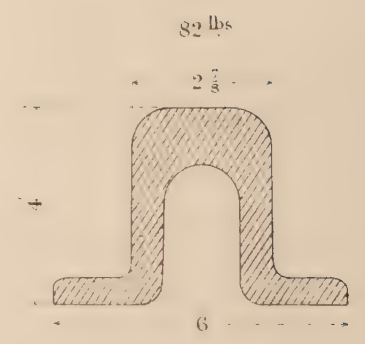


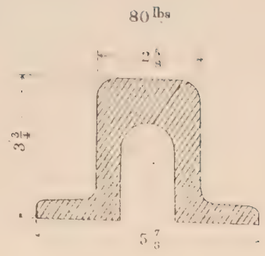
30. LONDONDERRY AND COLERAINE.



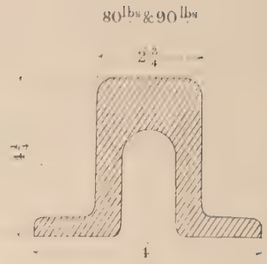




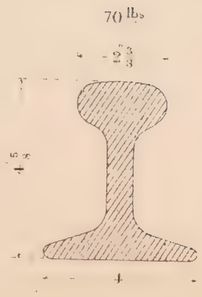




40. DUBLIN AND KINGSTOWN.

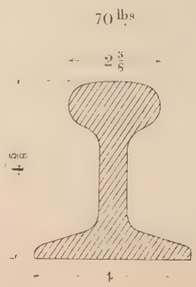


41. GREAT SOUTHERN AND WESTERN.

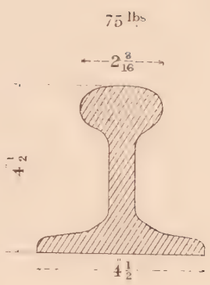


45. FINN VALLEY.

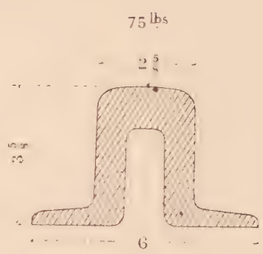
46. LONDONDERRY AND ENNISKILLEN.



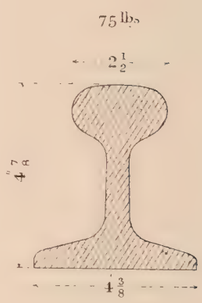
47. LONDONDERRY AND LOUGH SWILLY.



51. NEWRY AND ARMAGH.

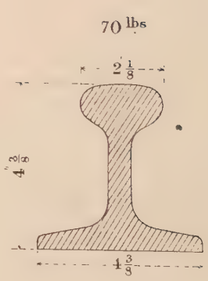


52. NEWRY WARRENPOINT AND ROSTREVOR.

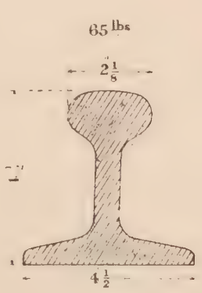


55. PORTADOWN, DUNGANNON AND OMAGH.

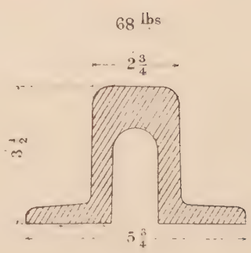
56. WATERFORD TO KILKENNY.



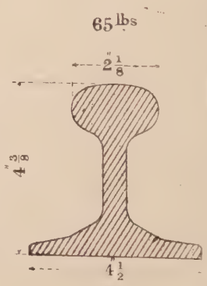
57. KILKENNY JUNCTION.



62. RATHKEALE AND NEWCASTLE.



63. WATERFORD AND TRAMORE.



64. WEST CORK.

No.	R
26	BELFAST AND
27	BELFAST HO
28	BELFAST AND
29	CARRICKFERG
30	LONDONDERR
31	CORK AND B
32	CORK AND K
33	CORK BLACK
34	CORK AND M
35	DUBLIN AND
36	BANBRIDGE J
37	DUBLIN AND
38	DUBLIN AND
39	DUBLIN WIC

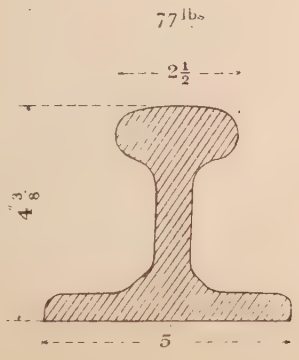
(Ireland) Commission.

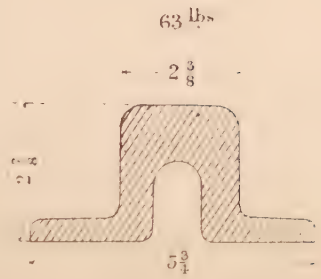
CTIONS OF

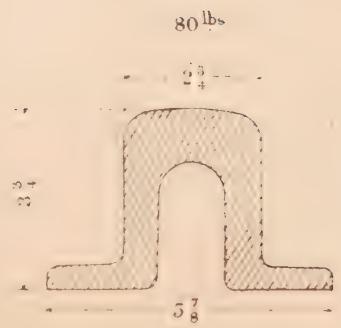
AILS.

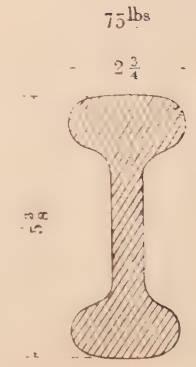
cling Type of the various Companies.

APRIL, 1868.

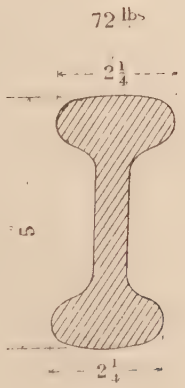




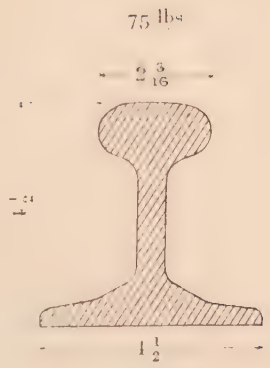




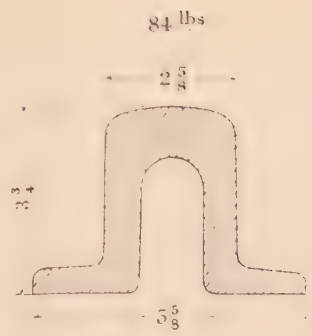
28. BELFAST AND NORTHERN COUNTIES.

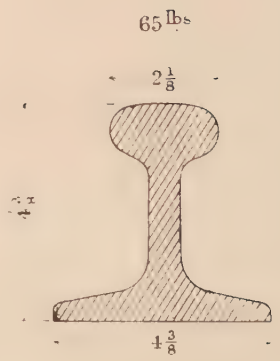


31. CORK AND BANDON.

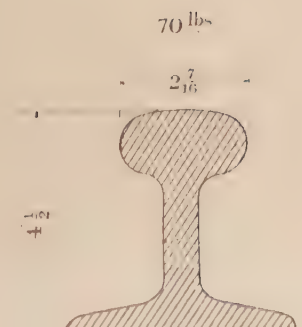


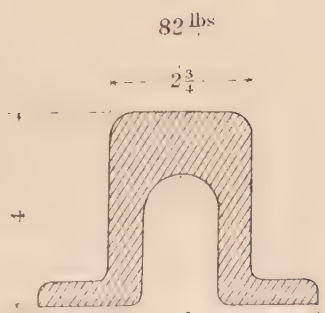
32. CORK AND KINSALE.

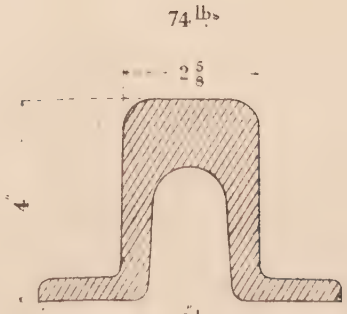


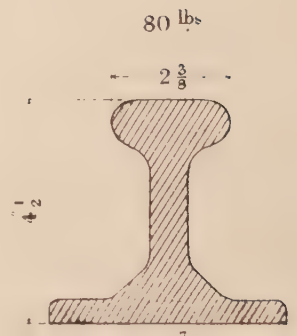


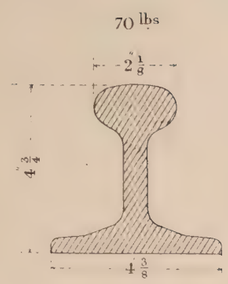
33. CORK, BLACKROCK AND PASSAGE.



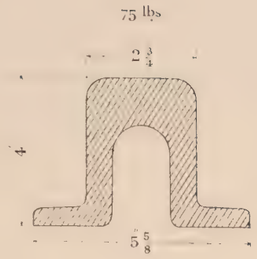




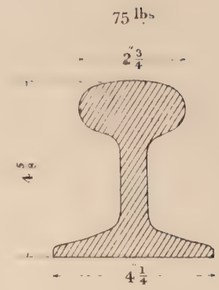




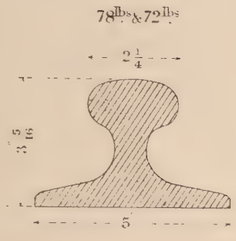
42. CORK AND LIMERICK DIRECT.



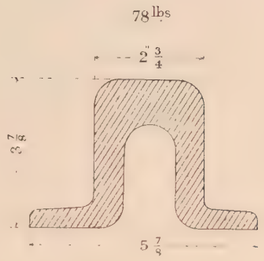
43. IRISH NORTH WESTERN.

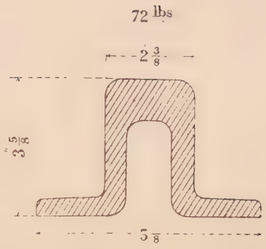


44. ENNISKILLEN, BUNDORAN AND SLIGO.

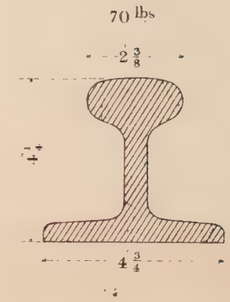


48. MIDLAND GREAT WESTERN.

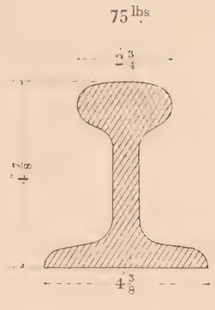


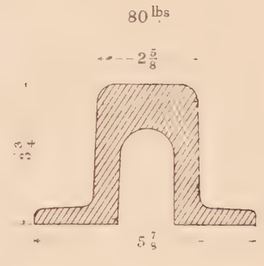


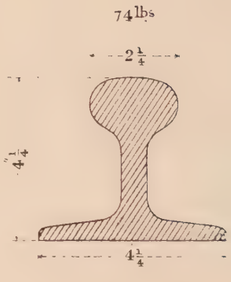
49. ATHENRY AND TUAM.



50. GREAT NORTHERN AND WESTERN.

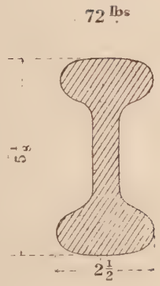


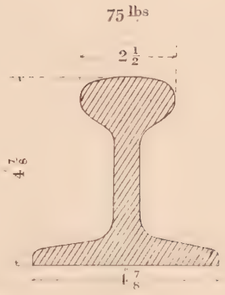


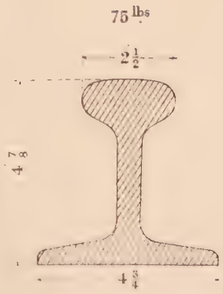


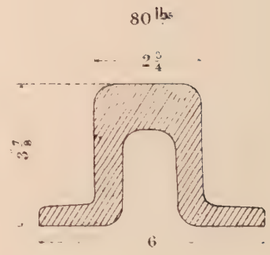
53. THE ULSTER RAILWAY.

54. BANBRIDGE, LISBURN AND BELFAST.









. WATERFORD AND LIMERICK

59. LIMERICK AND CASTLECONNELL.

60. LIMERICK AND ENNIS.

61. LIMERICK AND FOYNES.

TABLE OF THE VARIOUS SECTIONS OF RAIL.

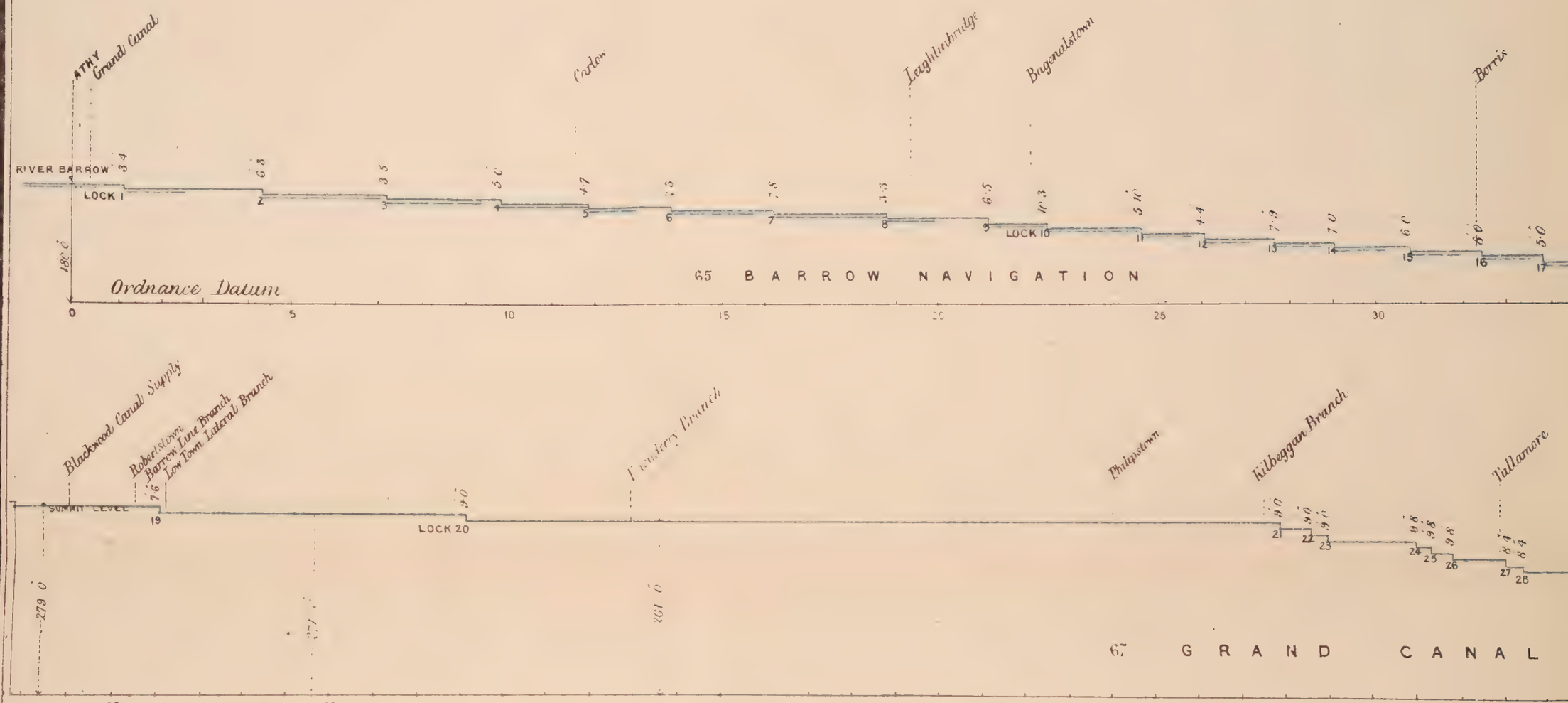
WAY	MILES OF SINGLE WAY.					SECTION OF RAIL USED FOR RENEWALS.
				VARIOUS OTHER SECTIONS	TOTALS	
NTY DOWN	3½	–	40¾	–	44¼	
D AND BANGOR	12¼	–	–	–	12¼	
HERN COUNTIES	49½	16¾	39	1¼	106	
D LARNE	15½	–	–	–	15½	
COLERAINE	4¼	31½	–	–	35¾	
	–	20	–	–	20	
	10¾	–	–	–	10¾	
AND PASSAGE	1	–	5¼	–	6¼	
M	23¼	–	–	–	23¾	
ST JUNCTION	17	–	78	16	111	
N	6¾	–	–	–	6¾	
EDA	–	–	106½	–	106½	
	1	–	34½	–	35½	
ND WEXFORD	51¼	–	50½	8¾	110½	
IED FORWARD	196½	67¾	354½	26	644¾	

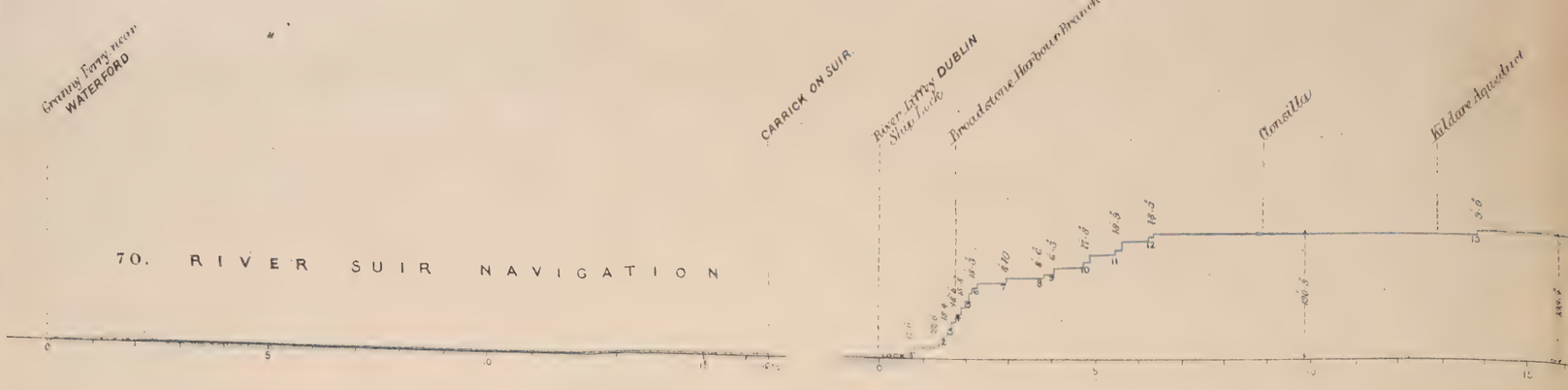
No.	RAILWAY	MILES OF SINGLE WAY.					SECTION OF RAIL USED FOR RENEWALS.
					VARIOUS OTHER SECTIONS	TOTALS	
	BROUGHT FORWARD	196½	67¾	354½	26	644¾	
40	DUBLIN AND KINGSTOWN	4¼	1¼	8¾	–	14¼	
41	GREAT SOUTHERN AND WESTERN	38	–	571	–	609	
42	CORK AND LIMERICK DIRECT	17¼	–	–	–	17¼	
43	IRISH NORTH WESTERN	51¾	–	34½	–	86¼	
44	ENNISKILLEN BUNDORAN AND SLIGO	35½	–	–	–	35½	
45	FINN VALLEY	13¼	–	–	–	13¼	
46	LONDONDERRY AND ENNISKILLEN	¼	69½	–	–	69¾	
47	LONDONDERRY AND LOUGH SWILLEY	14¾	–	–	–	14¾	
48	MIDLAND GREAT WESTERN	107¾	–	254¼	–	362	
49	ATHENRY AND TUAM	–	–	15¼	–	15¼	
50	GREAT NORTHERN AND WESTERN	82¾	–	–	–	82¾	
51	NEWRY AND ARMAGH	21	–	–	–	21	
52	NEWRY WARRENPOINT AND ROSTREVOR	1	–	5¼	–	6¼	
	CARRIED FORWARD	584	138½	1,243½	26	1,992	

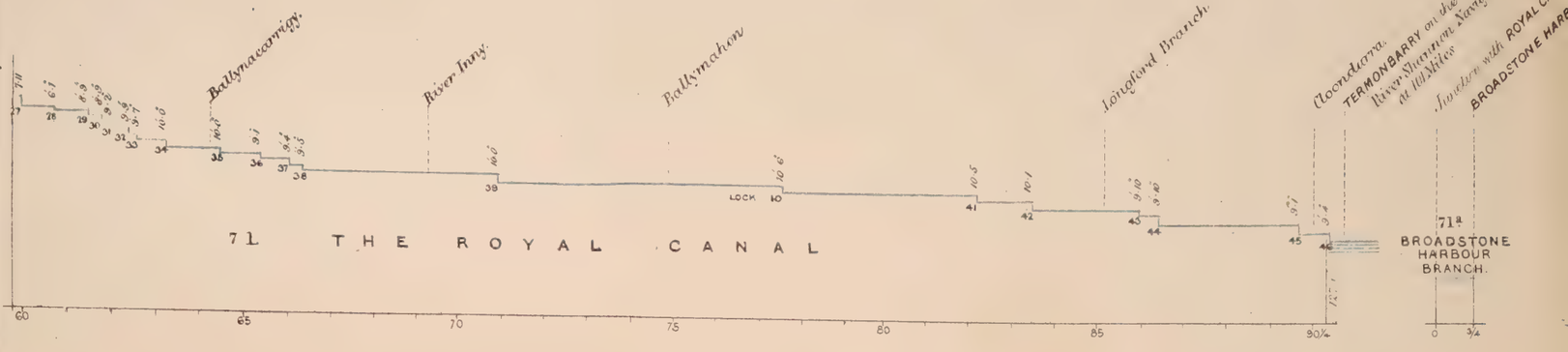
No.	RAILWAY	MILES OF SINGLE WAY.					SECTION OF RAIL USED FOR RENEWALS
					VARIOUS OTHER SECTIONS	TOTALS	
	BROUGHT FORWARD	584	138½	1,243½	26	1,992	
53	ULSTER RAILWAY	2¼	38¾	60½	11½	113	
54	BANBRIDGE LISBURN AND BELFAST	15	–	–	–	15	
55	PORTADOWN DUNGANNON AND OMAGH	28	1	12	–	41	
56	WATERFORD AND KILKENNY	–	29	–	–	29	
57	KILKENNY JUNCTION	19	–	–	–	19	
58	WATERFORD AND LIMERICK	–	100¾	–	–	100¾	
59	LIMERICK AND CASTLE CONNELL	13	–	–	–	13	
60	LIMERICK AND ENNIS	24	–	–	–	24	
61	LIMERICK AND FOYNES	–	–	27	–	27	
62	RATHKEALE AND NEWCASTLE	10	–	–	–	10	
63	WATERFORD AND TRAMORE	–	–	7¼	–	7¼	
64	WEST CORK	17½	–	–	–	17½	
	TOTAL MILES	712¾	308	1,350¼	37½	2,408½	

SECTIONS of CANALS

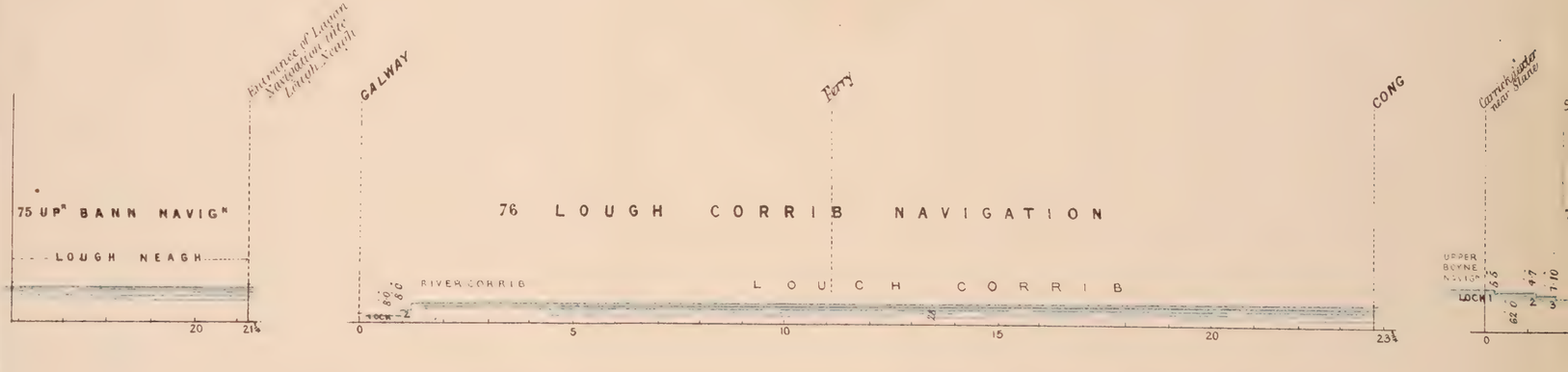
Horizontal Scale 5/16 of an Inch to the Mile ___ Vertical Scale 200 Feet to the Inch.

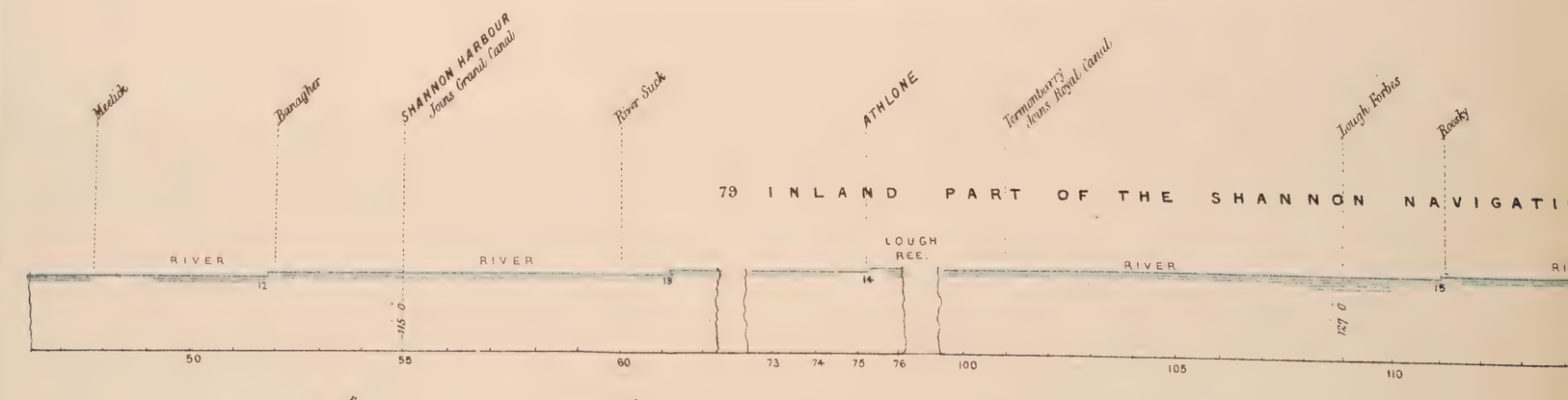


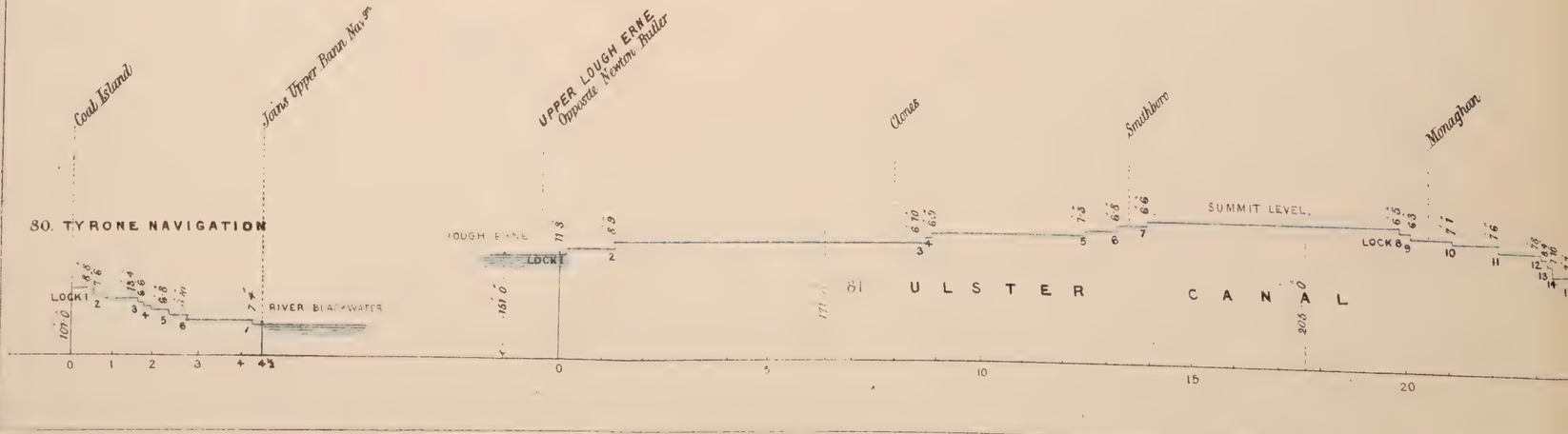

Geasey Ferry near WATERFORD
CARRICK ON SUIR.
Boyer Lyttle DUBLIN
Broadstone Harbour Branch
Canal Lks
Kildare Aqueduct
70. RIVER SUIR NAVIGATION


Ballymacarrigy
River Inny
Ballymahon
Longford Branch
Cloondarra
TERMONBARRY on the River Shannon Navigation
At 110 Miles
Junction with ROYAL CANAL
BROADSTONE HARBOUR
LOCK 10
71. THE ROYAL CANAL
71a BROADSTONE HARBOUR BRANCH.

Ballyconnell
UPPER LOUGH ERNE
COLERAINE
Kilrea
RIVER
WOODFORD RIVER
73. BALLINAMORE AND BALLYCONNELL NAVIGN
Tidal part of the River Bann
LOWER RIVER BANN.
74. THE LOWER
LOWER RIVER BA


Entrance of Lagoon Navigation into Lough Neagh
GALWAY
Ferry
CONG
Carrick on Shannon
75 UPR BANN NAVIGN
LOUGH NEAGH
76 LOUGH CORRIB NAVIGATION
RIVER CORRIB
LOUCH CORRIB
UPPER BOYNE NAVIGN
LOCK 1


Mediak
Banagher
SHANNON HARBOUR
Joins Grand Canal
River Suck
ATHLONE
Tormonbarry Joins Royal Canal
Lough Forbes
Rooskey
79 INLAND PART OF THE SHANNON NAVIGATI
RIVER
LOUGH REE.
RIVER


Coal Island
Joins Upper Bann Navn
UPPER LOUGH ERNE
Opposite Newton Butler
Clones
Smithboro
Monaghan
80. TYRONE NAVIGATION
LOCK 1
RIVER BLACKWATER
LOUGH ERNE
SUMMIT LEVEL.
LOCK 1
LOCK 8
81 ULSTER CANAL

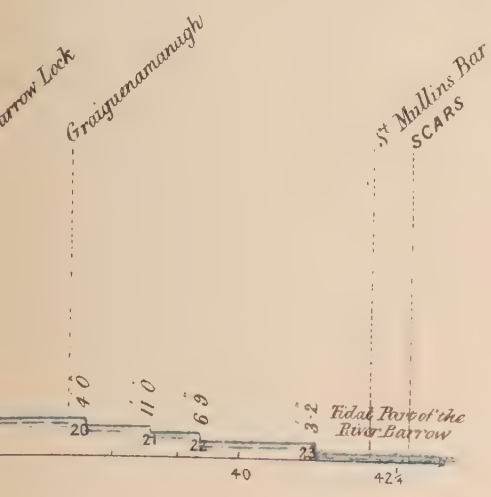
...rland) Commission.

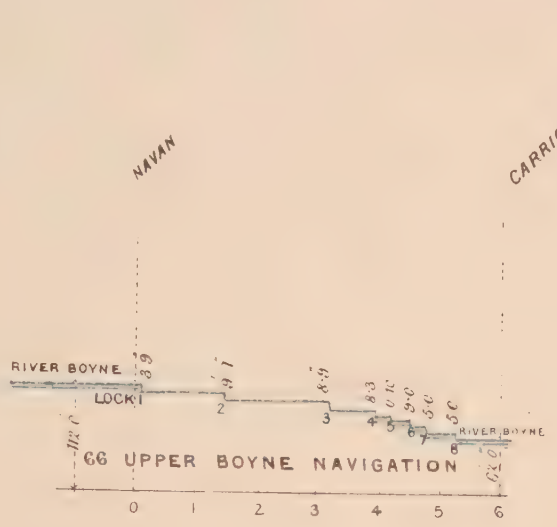
PLATE 3.

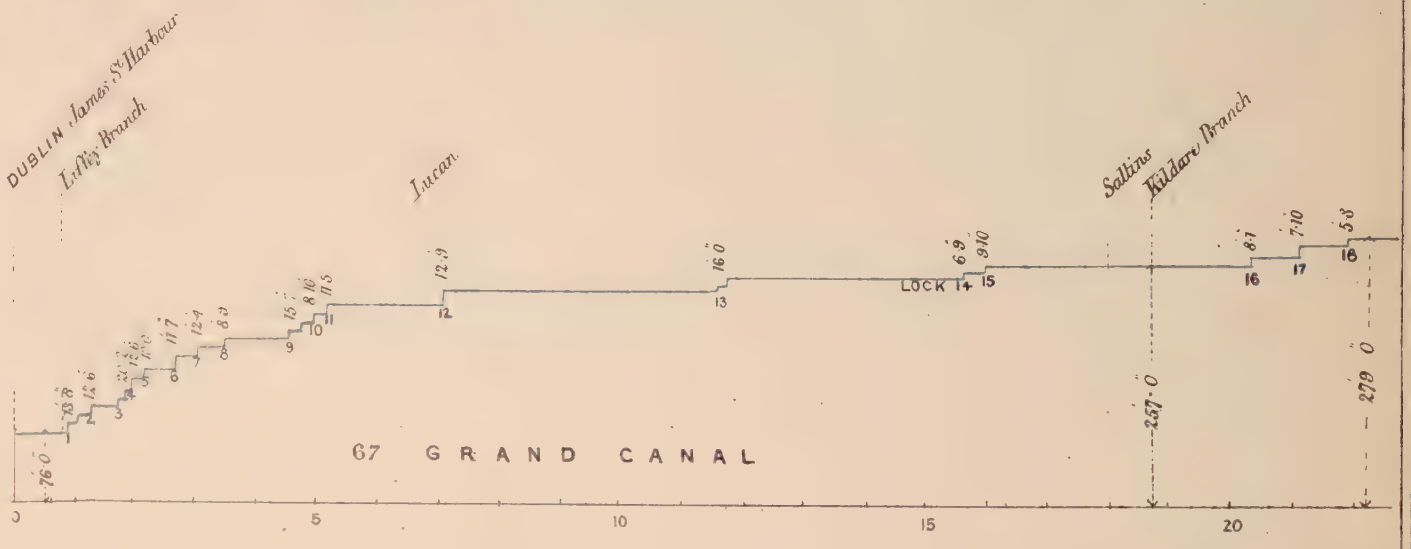
...AND RIVER NAVIGATIONS.

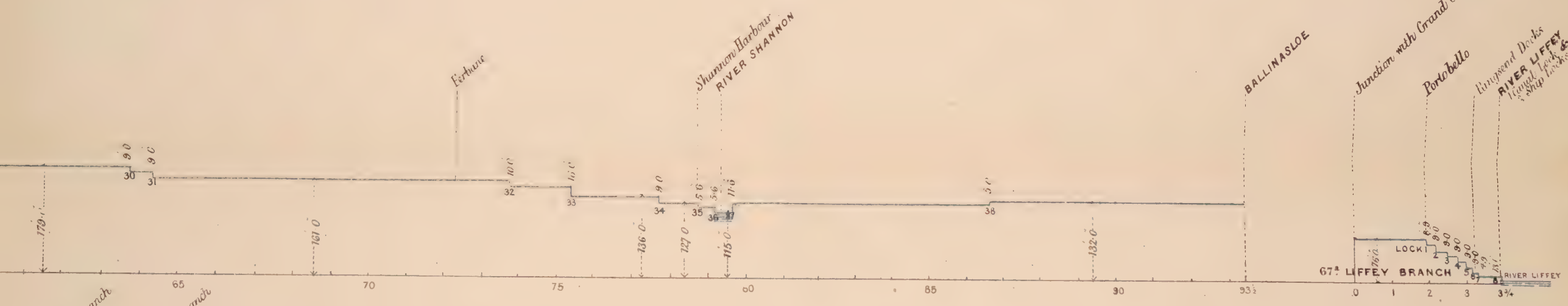
...PRIL, 1868.

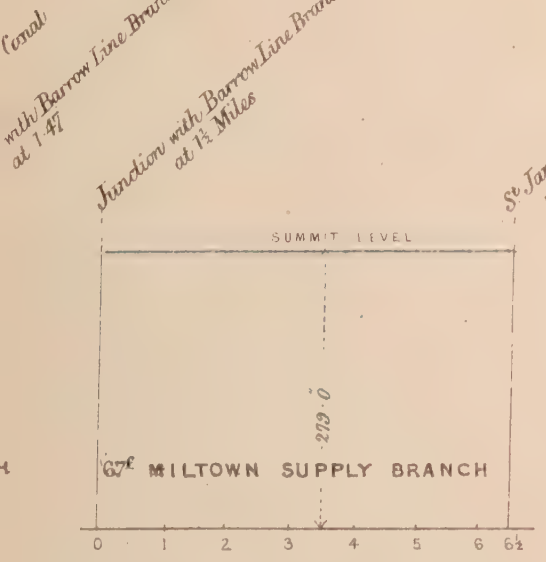
...atum Line taken is the Ordnance Datum, which is 8 Feet below the mean Sea Level, and 209 Ft below a mark on the Base of the Poolbeg Lighthouse at Dublin.

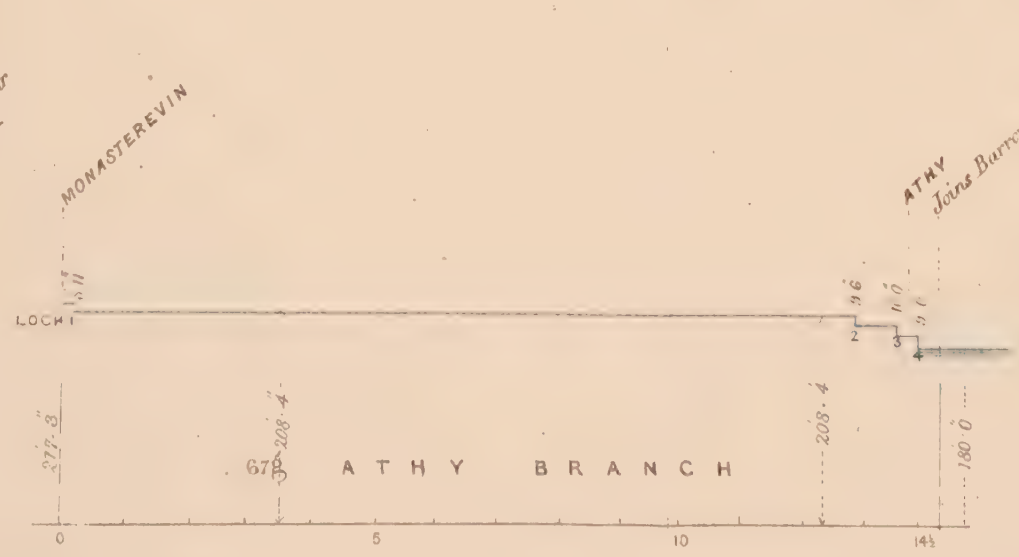


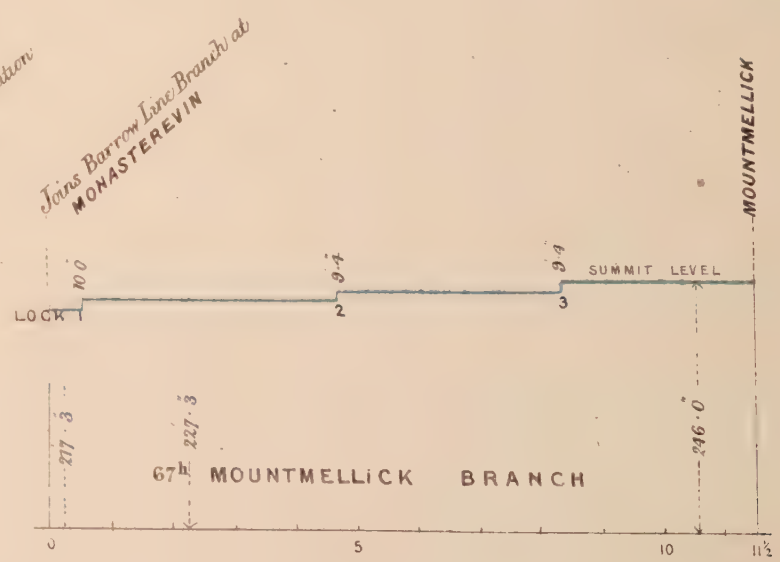


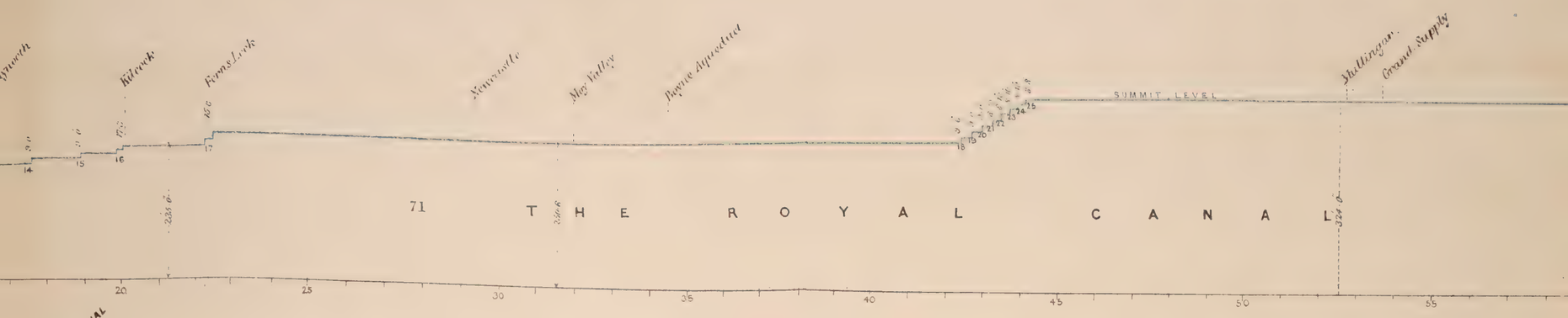


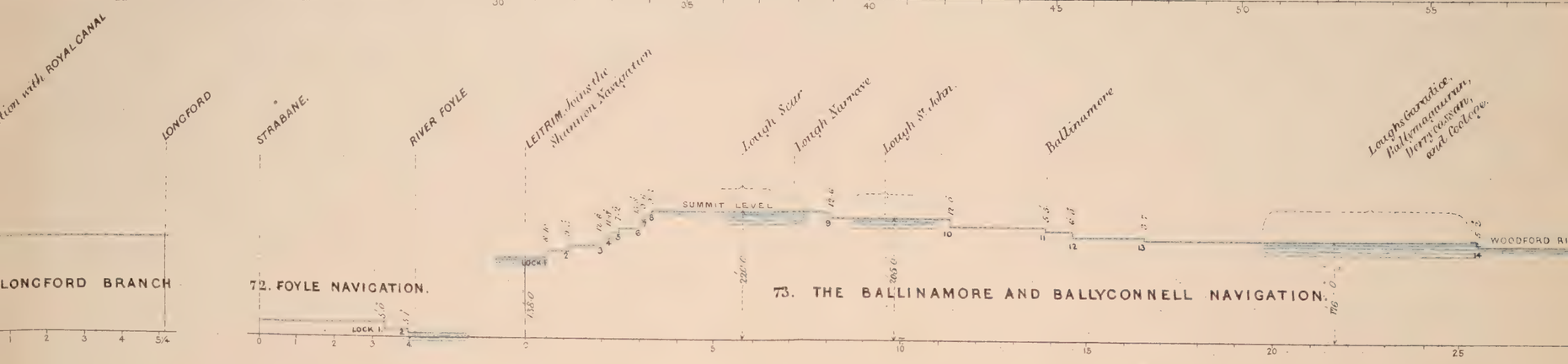


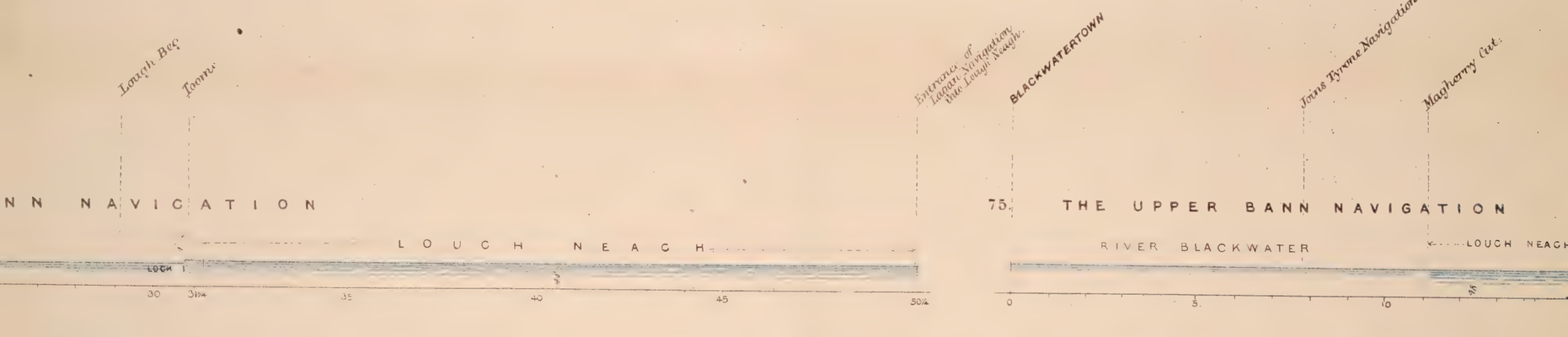


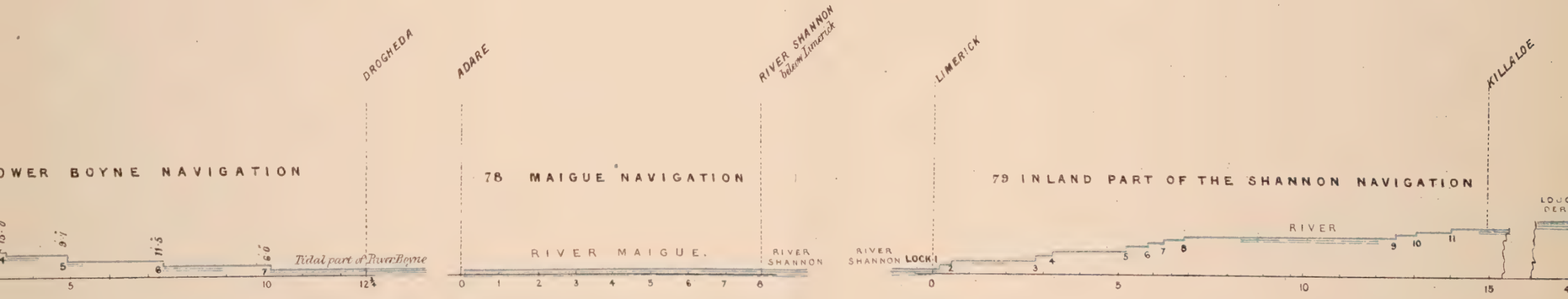


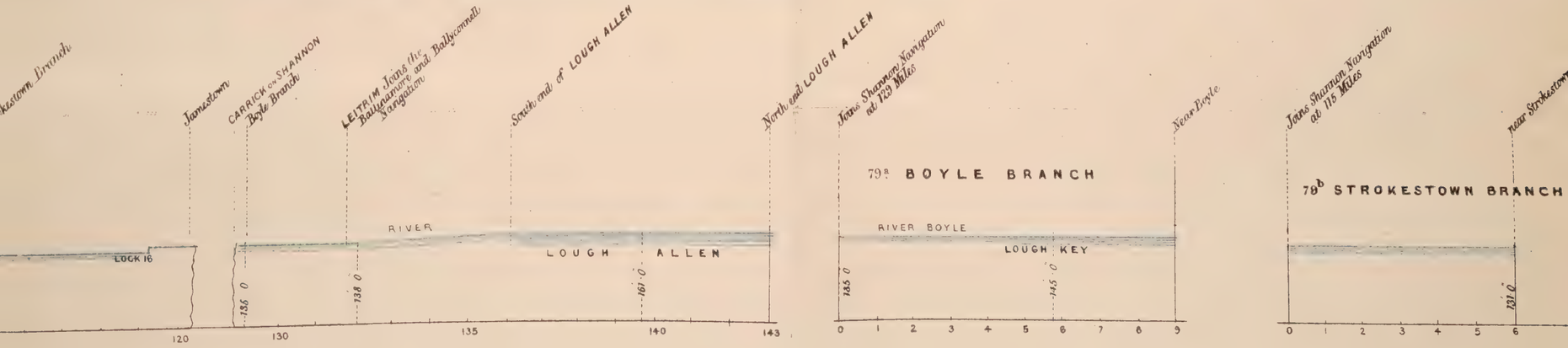


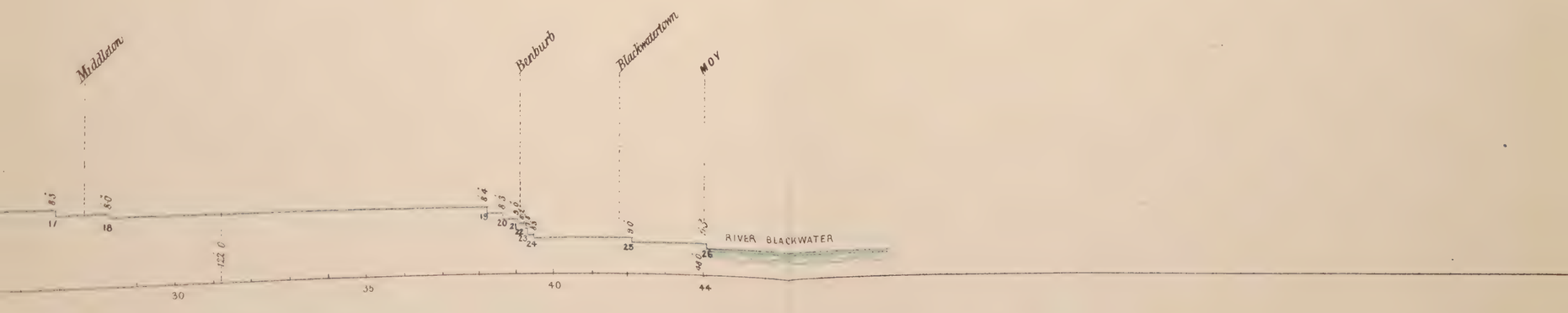

Kilcock
Ferns Lock
Newcastle
Mag Valley
Boyne Aqueduct
SUMMIT LEVEL
Mullingar.
Ground Supply
71 THE ROYAL CANAL


LONGFORD
STRABANE.
RIVER FOYLE
LEITRIM. Joins the Shannon Navigation
Lough Scur
Lough Namave
Lough St. John
Ballinamore
Lough Gowna, Ballymagauran, Derrycassan, and Cootehall
SUMMIT LEVEL
LONGFORD BRANCH
72. FOYLE NAVIGATION.
73. THE BALLINAMORE AND BALLYCONNELL NAVIGATION.


Lough Beg
Toome
Entrance of Lagan Navigation into Lough Neagh.
BLACKWATERTOWN
Ivins Tyrone Navigation
Maghery Cut.
NN NAVIGATION
LOUCH NEAGH
75. THE UPPER BANN NAVIGATION
RIVER BLACKWATER
LOUCH NEAGH


DROGHEDA
ADARE
RIVER SHANNON below Limerick
LIMERICK
KILLALOE
OWER BOYNE NAVIGATION
Tidal part of River Boyne
78 MAIGUE NAVIGATION
RIVER MAIGUE.
RIVER SHANNON
79 INLAND PART OF THE SHANNON NAVIGATION
RIVER
RIVER SHANNON LOCK 1

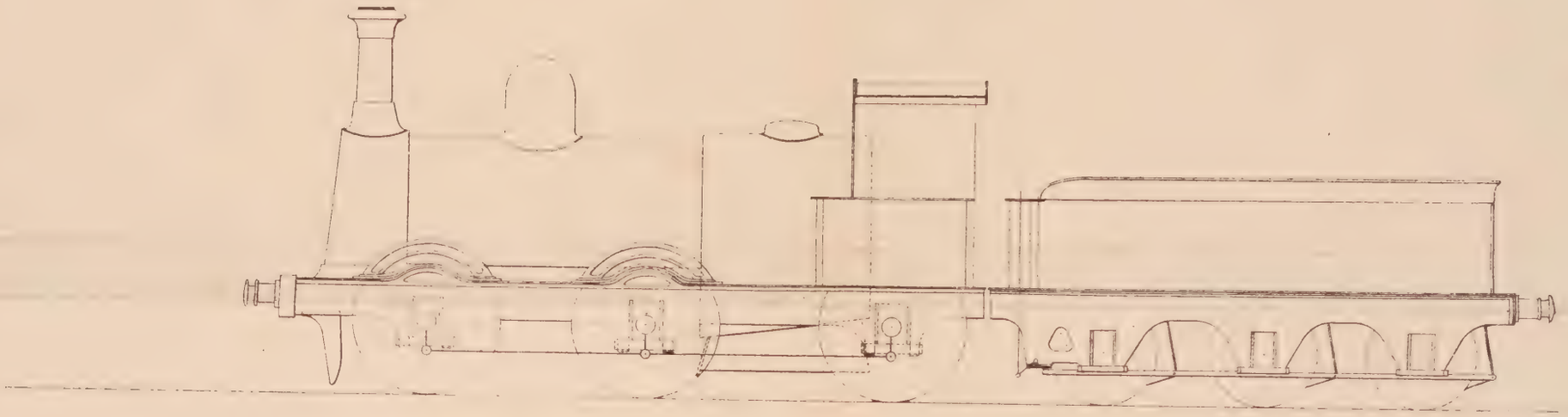

Jamestown
CARRICK on SHANNON Boyle Branch
LEITRIM Joins the Ballinamore and Ballyconnell Navigation
South end of LOUGH ALLEN
North end LOUGH ALLEN
Joins Shannon Navigation at 129 Miles
Near Boyle
Joins Shannon Navigation at 115 Miles
near Strokestown
LOCK 16
RIVER
LOUGH ALLEN
79a BOYLE BRANCH
RIVER BOYLE
LOUGH KEY
79b STROKESTOWN BRANCH


Middleton
Banbury
Blackwatertown
MOY
RIVER BLACKWATER

Railw

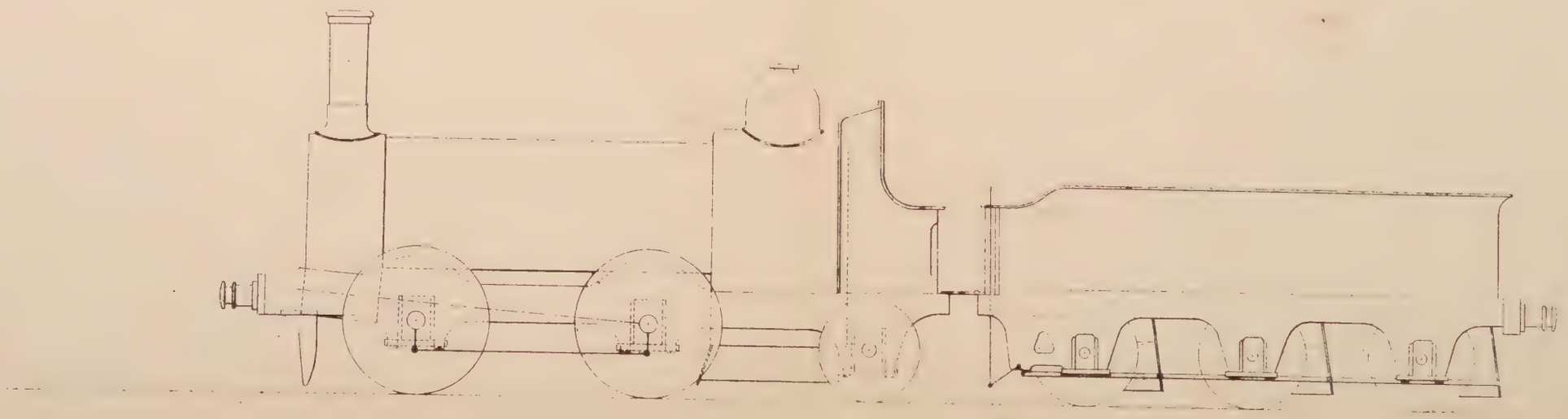
STANDARD TYPES

Scale 1 64th full size.



GREAT SOUTHERN AND WESTERN RAILWAY — GOODS ENGINE AND TENDER.

Cylinders 17 ins diameter, 24 ins stroke.
Wheels 5ft. 2 ins diameter.



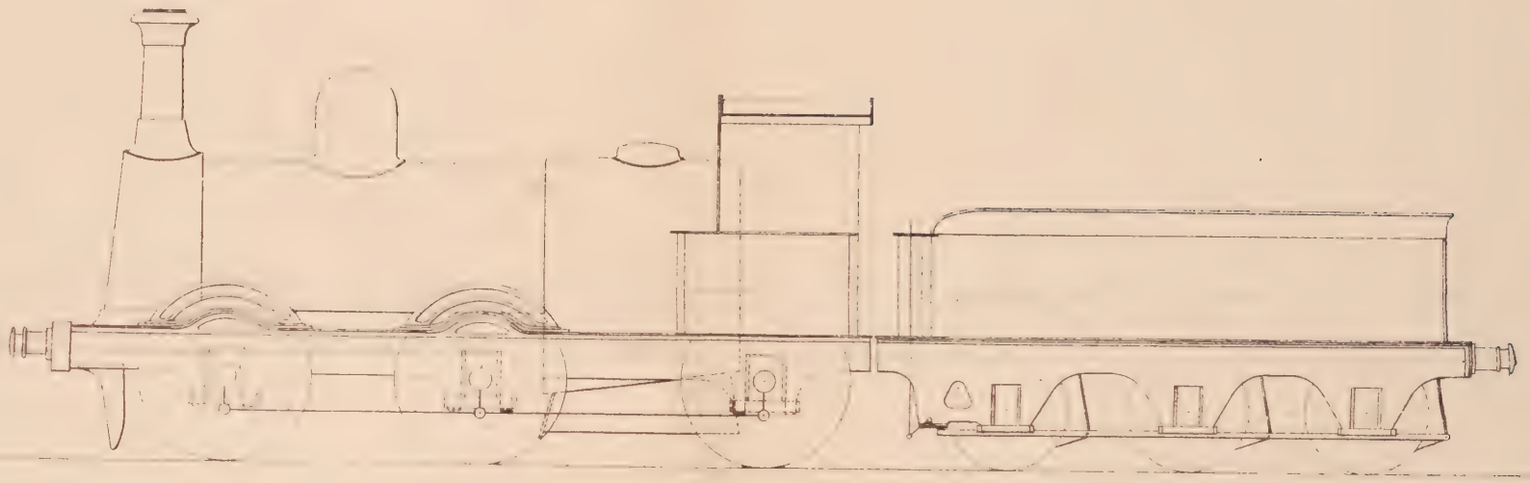
MIDLAND GREAT WESTERN RAILWAY — GOODS ENGINE AND TENDER.

Cylinders 17 ins diameter, 24 ins stroke.

Railw

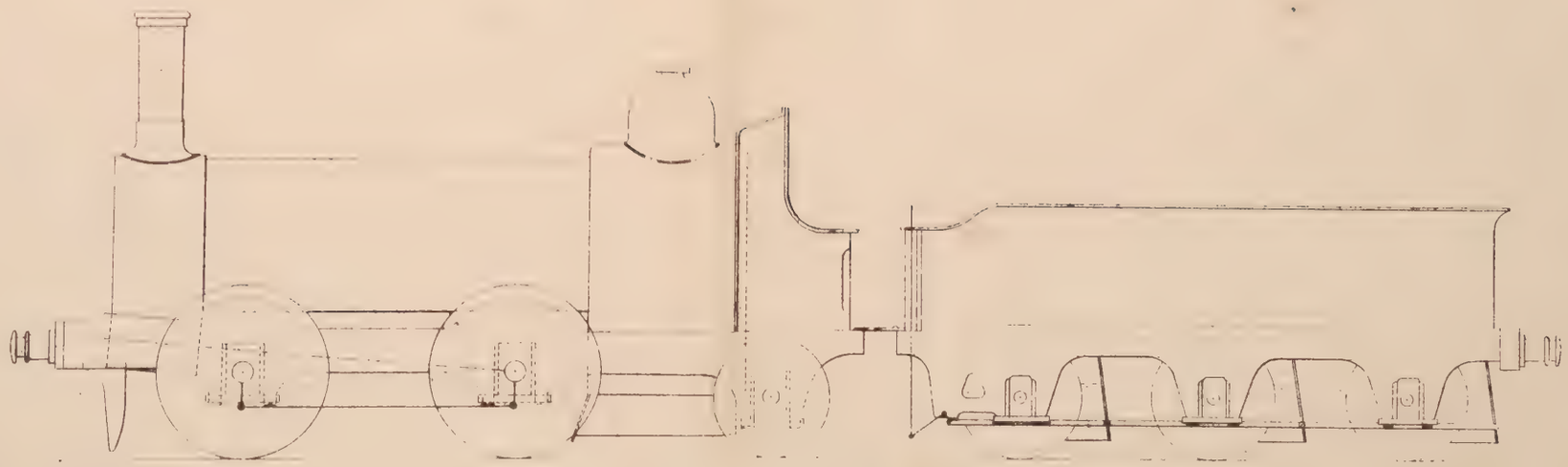
STANDARD TYPES

Scale 1 64th full size.



GREAT SOUTHERN AND WESTERN RAILWAY — GOODS ENGINE AND TENDER.

Cylinders 17 ins diameter, 24 ins stroke.
Wheels 5ft. 2 ins diameter.

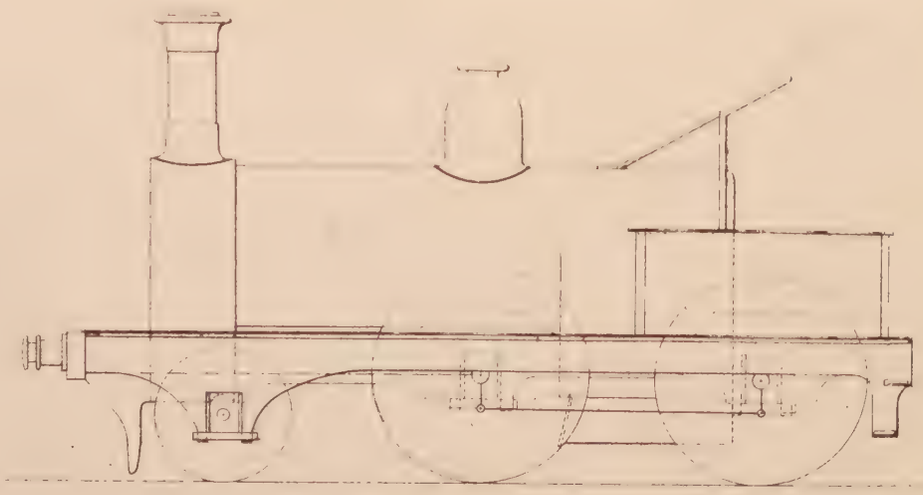


MIDLAND GREAT WESTERN RAILWAY — GOODS ENGINE AND TENDER

Cylinders 17 ins diameter, 24 ins stroke.

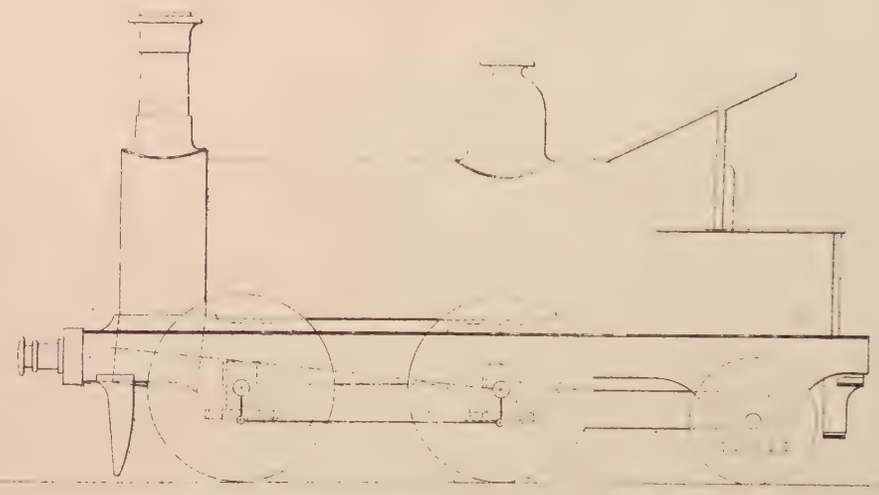
ULSTER RAILWAY — PASSENGER ENGINE (COUPLED)

Cylinders 15 ins. diameter, 20 ins. stroke.
Wheels 5ft. 6 ins. diameter.



IRISH NORTH WESTERN RAILWAY — PASSENGER ENGINE.

Cylinders 15 ins. diameter, 20 ins stroke.
Wheels 6ft. 0 in. diameter.

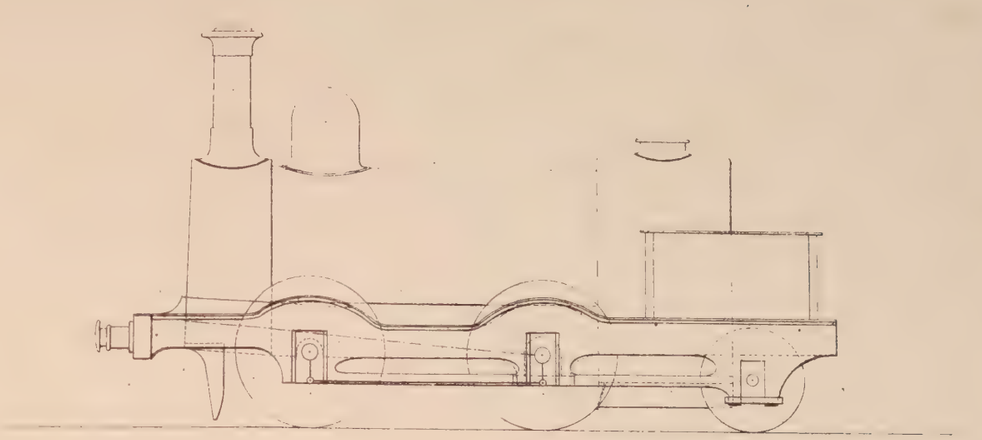


IRISH NORTH WESTERN RAILWAY — GOODS ENGINE.

Cylinders 16 ins. diameter, 24 ins. stroke
Wheels 5ft. 3 ins. diameter

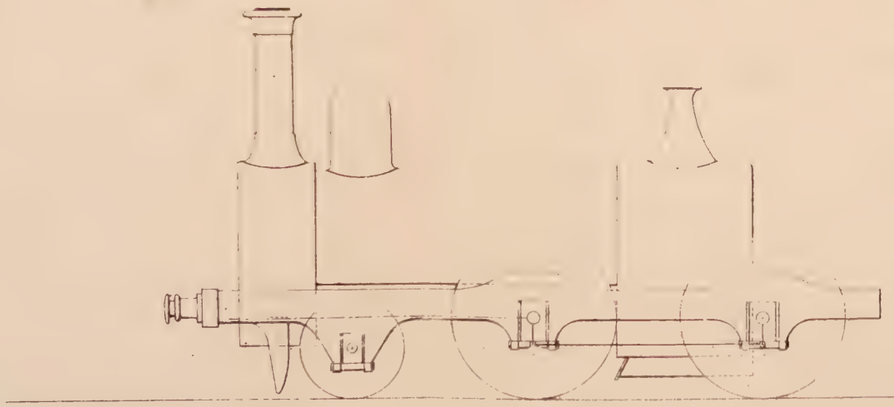
ULSTER RAILWAY — PASSENGER ENGINE.

Cylinders 15 in.s diameter, 20 in.s stroke.
Wheels 5ft. 6 in.s diameter.



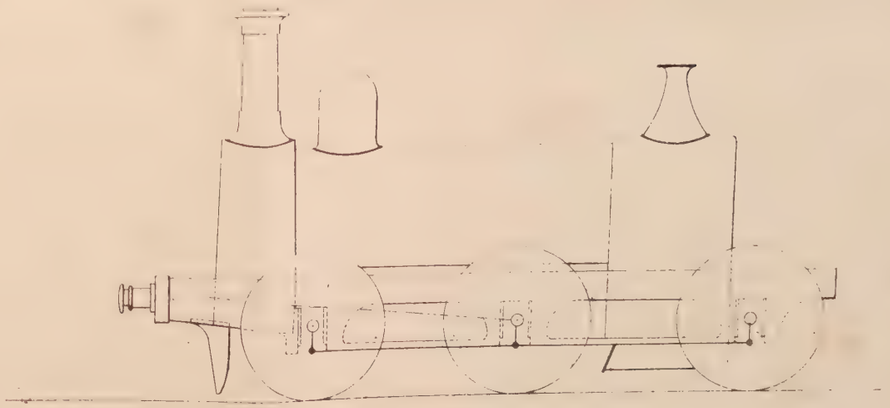
ULSTER RAILWAY — GOODS ENGINE.

Cylinders 17 in.s diameter, 24 in.s stroke.
Wheels 5ft. 0 in. diameter.



BELFAST AND NORTHERN COUNTIES RAILWAY — PASSENGER ENGINE.

Cylinders 15 in.s diameter, 20 in.s stroke.
Wheels 6 ft. 0 in. diameter.



BELFAST AND NORTHERN COUNTIES RAILWAY — GOODS ENGINE

Cylinders 16 in.s diameter. 24 in.s stroke
Wheels 5ft. 1 in. diameter